

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FINESSE WIRELESS, LLC, (CAUSE NO. 2:21-CV-316-JRG
)
Plaintiff, ()
vs. ()
AT&T MOBILITY, LLC, et al., (MARSHALL, TEXAS
) JANUARY 9, 2023
Defendants.) 8:30 A.M.

VOLUME 1

TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE

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1 THE COURT: Thank you. Be seated, please.

2 Good morning, ladies and gentlemen. It's good to see you
3 again. Welcome back. I appreciate, again, as I know the
4 parties and counsel do, your cooperation. Even though you
5 were here Friday, it's good to see you again on Monday
6 morning.

7 As I told you last Friday, my name is Rodney Gilstrap.
8 I'm the chief United States district judge here in the U.S.
9 District Court for the Eastern District of Texas. I have
10 lived in Marshall since 1981. I practiced law in this area in
11 this general East Texas area for 30 years before I was
12 nominated by the president and confirmed by the Senate as a
13 United States district judge.

14 I've been on the bench here since 2011, and I'll start
15 this morning with a confession. They say confessions are good
16 for the soul. I was not born in Texas, ladies and gentlemen,
17 but I got here just as quick as I could. At the ripe old age
18 of 18, I left Florida for Waco, Texas, to enroll as a student
19 at Baylor University. I stayed there and completed my
20 undergraduate degree, and then I moved across the street to
21 Baylor Law School and attended law school for the next three
22 years there.

23 I am married. I had two children. We lost one a few
24 months ago. They are both grown. And my wife owns and
25 operates a retail floral business here in Marshall.

1 Now, I tell you all these things about me because in a
2 few minutes as a part of this process, I'm going to ask each
3 of you to tell all of us similar type information about each
4 of you. And I think you're entitled to know as much about me
5 as I'm shortly going to find out about each of you-all.

6 We are engaged or about to be engaged this morning in the
7 selection of a jury in the civil case involving allegations of
8 patent infringement. If you'd indulge me, though, for just a
9 minute, I'd like to briefly review with you at this juncture
10 how we came to have our American civil jury trial system.

11 If you go back in ancient history, if you start with the
12 first five books in the Old Testament, the Pentateuch, you
13 will find that the ancient Hebrew nation impaneled juries to
14 decide issues of property ownership and property value.

15 The Greeks, the ancient Greeks, began using a jury system
16 about 1500 B C. The Romans, as with many other things, copied
17 the jury system from the Greeks and implemented a jury system
18 as a part of ancient Rome. And, in fact, it was the Romans
19 that brought the jury system to Europe across the English
20 channel into what we now know as Great Britain when they
21 conquered Great Britain in the fourth century A.D.

22 Now, by the 12th century A.D., the jury system had been
23 in place in England, what we now know as England, for 800
24 years. But in the 12th century A.D., a rather tyrannical king
25 came to the throne of England and his name was King John. And

1 he became embroiled in various disputes with his nobles that
2 nearly led to the verge of a civil war.

3 One of those disputes was the king's efforts to do away
4 with the right to trial by jury. Thankfully, the civil war
5 did not take place at that time, and the king and his nobles
6 resolved their many disputes, including this one, by entering
7 into a written agreement that they signed at a place in
8 England called Runnymede. And this agreement that settled all
9 these disputes and laid out a structure for that country going
10 forward, including guarantees of the right to trial by jury,
11 is a document many of you may have heard of called the Magna
12 Carta.

13 And so you can see, ladies and gentlemen, that our
14 British forefathers who came to this continent as colonists
15 brought the jury trial system with them. And the jury trial
16 system flourished in colonial America for over a hundred
17 years, until another tyrannical king came to the throne of
18 Great Britain. This time his name was King George III. I'm
19 sure you've have studied him in American history that led up
20 to our American revolutionary war. And the king, prior to
21 that, became embroiled in many disputes with his American
22 colonists.

23 One of those disputes was King George III efforts was to
24 do away with or to substantially curtail the right to trial by
25 a jury. In fact, ladies and gentlemen, when Thomas Jefferson

1 sat down to write the Declaration of Independence which spells
2 out -- it really was a letter to the king telling the king all
3 of the reasons why his subjects in America felt they had no
4 other option but to revolt, declare their independence, and
5 form their own independent nation, one of those reasons set
6 forth by Thomas Jefferson in the Declaration of Independence
7 for that separation between America and Britain was King
8 George III's efforts to do away with or curtail substantially
9 the right to trial by jury.

10 And as you're all aware, we did revolt against Great
11 Britain, we did form our own independent nation, and shortly
12 thereafter we adopted the governing document for our country,
13 the supreme law of the land, the Constitution of the United
14 States.

15 And immediately after the Constitution was ratified,
16 there were ten additions or amendments added to the
17 Constitution. Many of the states made it clear they would not
18 vote to ratify the Constitution without a commitment to
19 immediately add these ten amendments. And these ten
20 amendments you've all studied about in school. They're called
21 the Bill of Rights.

22 And in those first ten amendments to the Constitution,
23 you will find the Seventh Amendment to the Constitution, which
24 guarantees, ladies and gentlemen, the right to every American
25 citizen to have their civil disputes resolved through a trial

1 by jury. Those ten amendments, the Bill of Rights, were all
2 ratified in 1791. So since 1791, well over 200 years ago,
3 every American has had a constitutionally guaranteed right to
4 have their civil disputes settled through a trial by jury.

5 So by being here this morning, with that brief background
6 and overview of how we got to have the jury trial system that
7 we're implementing today, I want you to realize in the Court's
8 view every one of you here are doing a very important part to
9 preserve, protect, and defend the right to trial by a jury as
10 part of our constitutionally guaranteed rights.

11 I always tell citizens who appear for jury duty as you
12 have this morning that, in my personal view, the jury duty or
13 jury service rendered by any citizen is the second highest
14 form of public service any American can render for their
15 country. In my personal view, the highest form of public
16 service are those men and women that serve in our armed
17 forces.

18 Now, later in the process this morning, the lawyers for
19 both sides are going to address you. They're going to ask you
20 questions. I want you to understand none of them are seeking
21 to inquire unduly into your personal affairs. Said another
22 way, none of them are trying to be nosy and to ask you about
23 things that are not relevant to this case. They will be
24 asking you questions as a part of working with the Court to
25 secure a fair and an impartial jury from among you to hear the

1 evidence in this case.

2 I want you to also understand when the lawyers ask you
3 questions later as a part of this process, there are no wrong
4 answers, as long as the answers you give are full, complete,
5 and truthful. As long as they're full, complete, and
6 truthful, there are no wrong answers.

7 Now, I don't know if it will happen this morning, it
8 could but it's very rare, but it's possible that you could be
9 asked a question that in your own individual view calls for an
10 answer that is so personal, that you're not comfortable
11 answering it in front of everybody else in the room.

12 If that should happen, and again I don't think it's
13 likely, but if that should happen, you have the option to
14 simply say in response you'd like to discuss that with Judge
15 Gilstrap. And if that's your answer, then I'll provide an
16 opportunity for you to answer that outside of the presence of
17 everyone else on the panel. But, again, that doesn't come up
18 very often, but I want you to know about it.

19 End of file 1.

20 Now, the trial in this case, ladies and gentlemen, is
21 going to begin today right after we get the jury selected,
22 seated, and sworn, and I expect that the trial will go through
23 the remainder of this week. I also expect that we'll have a
24 verdict and the trial will be finished sometime on Friday of
25 this week. That's my expectation.

1 Today is the 9th, and Friday -- I hope none of you are
2 superstitious, but Friday is Friday the 13th, and that's my
3 best estimate that we'll be done by that period of time. Now,
4 that's not a guarantee, but I've been doing this a long time.
5 I've tried more than a hundred civil jury trials since I've
6 been on the bench, so I have a pretty good idea of how long
7 this is going to take.

8 Now, what I need to ask you is if there are any of you on
9 the panel that, if you were selected to serve on this jury,
10 could not be here through the remainder of this week? And by
11 that, I mean you have a very serious conflict that would make
12 it nearly impossible for you to be here. As I told you on
13 Friday, jury service is by its nature a sacrifice. And I'm
14 not talking about inconvenience. I'm not talking about
15 disruption of your ordinary routine because that's just part
16 and parcel of serving on a jury.

17 Let me give you an example. If you or an immediate
18 family member who's dependent upon you has a surgical
19 procedure scheduled this week and that can't easily be
20 rescheduled, that would be the kind of thing that I'm asking
21 about. If there's some reason that in your mind would make it
22 very difficult in a serious sense to be here all week if you
23 were selected to serve on this jury, then I need to know about
24 it.

25 If there's anybody that falls in that category, please

1 raise your hands and let me make a note of it. Okay. No. 9,
2 No. 11, No. 20, No. 25. Anybody else? No. 25, 20, 11, and 9.

3 Thank you very much, ladies and gentlemen.

4 At this time I'm going to call for announcements in the
5 case of Finesse Wireless, LLC., versus AT&T Mobility, LLC, and
6 others. This is Civil Case No. 2:21-CV-316. And, counsel, as
7 you offer your announcements on the record, please not only
8 identify yourselves but the members of your trial team and any
9 corporate representatives you have in the courtroom at this
10 time.

11 What says the Plaintiff?

12 MR. GRINSTEIN: Your Honor, good morning, Your
13 Honor. For Plaintiff Finesse, my name is Joe Grinstein.

14 With me at counsel table is Ms. Meng Xi, Mr. Johnny Ward,
15 Ms. Andrea Fair also, who are lawyers for our side.

16 Also, our corporate representative is with us, Mr. Frank
17 Smith.

18 And Mr. Johnny Ward will be conducting voir dire for us
19 this morning, and we are ready to proceed.

20 THE COURT: All right. Thank you, counsel.

21 What says the Defendant?

22 MR. DACUS: Good morning, Your Honor. I'm Deron
23 Dacus. And along with Dave Nelson and Brianne Straka, we are
24 here representing AT&T and Nokia.

25 Also with us today is Adam Loddeke. Adam is the director

1 of technical staff at AT&T.

2 And we're ready to proceed Your Honor.

3 THE COURT: All right. Thank you (Loddeke)

4 As I've told you, ladies and gentlemen, this case arises
5 under the patent laws of the United States, and the Plaintiff
6 in this case is claiming that it holds certain patents and
7 that those patents have been infringed by both AT&T and Nokia,
8 the Defendants in this case.

9 And let me stop here and explain something to you. I
10 don't want to be overly technical, but the Defendant in this
11 case is AT&T Mobility. They were sued by Finesse Wireless.
12 After the lawsuit was filed, Nokia intervened. They came in
13 to the court and said, we want to join the lawsuit together
14 with the Defendant AT&T. And the Court granted that.

15 So technically Nokia, which is going to be a big part of
16 this trial and they're going to participate and these lawyers
17 on this side of the room represent both AT&T and Nokia,
18 technically Nokia is what's called an intervenor because they
19 intervened or joined the lawsuit after it was originally
20 filed.

21 But for all intents and purposes, they are in the same
22 position as AT&T, they have the same set of lawyers, they're
23 going to present one set of evidence in this case, and it's
24 even possible that somewhere along the way somebody, including
25 me, might refer to them jointly as Defendants. But

1 technically Nokia intervened after the suit was filed, and so
2 they're called an intervenor and not a defendant. But they're
3 in the same posture and on the same side of the case with the
4 same group of lawyers defending it. So I want to explain that
5 before we get any further in case that creates or potentially
6 could create any confusion for anybody.

7 Now, the Plaintiff contends that its patents have been
8 infringed, and the Defendant and the intervenor AT&T and Nokia
9 deny that there's been any infringement of the Plaintiff's
10 patents. I know that all of you have seen the video last
11 Friday prepared by the Federal Judicial Center regarding
12 patent litigation and you, already having seen that, know more
13 about this kind of case than most people do when they appear
14 for jury duty.

15 Now, as I told you earlier, the lawyers for both sides as
16 a part of this jury selection process are going to ask you
17 questions, and they are doing that as a part of their efforts
18 with the Court to secure a fair, impartial jury to hear the
19 evidence. Again, any questions they ask you will have no
20 wrong answers as long as the answers you give are full,
21 complete, and truthful.

22 If for any reason you should be asked a question in this
23 process by one of the lawyers that I think is improper or
24 irrelevant or should not be asked for any reason, I will not
25 hesitate to stop them. But I want you to understand, ladies

1 and gentlemen, these are very experienced trial lawyers, some
2 of the most experienced trial lawyers in the United States.
3 They are well familiar with the Federal Rules of Civil
4 Procedure, the rules and the orders of this Court, and I don't
5 expect that to happen. But I'll be watching just so you're
6 aware.

7 One thing I want to call your attention to before the
8 lawyers begin with any questioning, because I think it's
9 possible they may ask you about your ability to apply this if
10 you're selected to serve on this jury, is something we call
11 the burden of proof.

12 In a patent case like this, the jury may be called upon
13 to apply two different burdens of proof. The jury may apply a
14 burden of proof called or known as the preponderance of the
15 evidence. I'll say that again, the preponderance of the
16 evidence, as well as a second and different burden of proof
17 known as clear and convincing evidence. I'll say that
18 again--clear and convincing evidence.

19 Now, when responding to any possible questions from the
20 lawyers about the burden of proof, I need to instruct you that
21 when a party has the burden of proof on any claim or defense
22 by a preponderance of the evidence, that's the first burden of
23 proof I mentioned to you, that means that you, the jury, must
24 be persuaded by the credible or believable evidence that that
25 claim or defense is more probably true than not true.

1 Let me say that again for emphasis--more probably true
2 than not true. Sometimes this is talked about and referred to
3 as being the greater weight and degree of credible testimony.

4 Let me hopefully give you an example that may be helpful
5 to you. In front of me is Mr. McRoberts, our court reporter.
6 In front of him, you'll see a statue in the courtroom of the
7 Lady Justice. I think the ancient Greeks called her Justicia.
8 But she is blindfolded. Her right hand holds the sword of
9 justice, which is lowered to her side. Her left hand holds
10 the scales of justice raised above her.

11 Those scales of justice are what I want you to focus on,
12 ladies and gentlemen. They are balanced and exactly equal,
13 and that's where the plaintiff and the Defendants in this
14 case, the Defendant and the intervenors, that's where all the
15 parties start out in this case--exactly in the same position,
16 balanced and equal.

17 Over the course of the trial, each side is going to put
18 on their evidence. Think of it this way: The Plaintiff will
19 put all of their evidence on one side, the Defendant and
20 intervenor will put all their evidence on the other side, and
21 when all the evidence has been placed on those scales, the
22 jury is going to be asked to answer certain questions.

23 And if the party who has the burden of proof on any
24 question that's been asked to the jury has those scales in the
25 jury's view have them tip toward the party who has that burden

1 of proof by a preponderance of the evidence, even if those
2 scales tip ever so slightly in that party's favor, then in
3 that event they have met their burden of proof by a
4 preponderance of the evidence.

5 Now, if the issue -- there's a second burden of proof,
6 and I'm going to talk to you about that. The second burden of
7 proof, which I mentioned to you, is clear and convincing
8 evidence. Clear and convincing evidence means an abiding
9 conviction that the truth of the party's factual contentions
10 are highly probable. Let me say that for emphasis--an abiding
11 conviction that the truth of the party's factual contentions
12 are highly probable. That is a higher standard, ladies and
13 gentlemen, than the preponderance of the evidence standard.

14 Let's go back to the same example. Throughout, the
15 parties start out equal. The scales start out balanced and
16 equal. During the trial, one side's evidence goes on one of
17 those scales, and the other side's evidence goes on the other
18 side of those scales.

19 Then when the jury's asked to answer certain questions,
20 if the party who has the burden of proof on an issue has the
21 burden of proof controlled by clear and convincing evidence,
22 then for that party to prevail on that to meet their burden of
23 proof by clear and convincing evidence, those scales must tip
24 in that party's favor or direction, and they must tip more
25 than ever so slightly. They must definitely tip in that

1 party's direction to meet the burden of proof of clear and
2 convincing evidence.

3 Now, in addition to these two burdens of proof, there is
4 a third burden of proof in the law, but it has absolutely no
5 application in this case, and it's something you probably all
6 heard about on television or in the media, and that different
7 third burden of proof is called beyond a reasonable doubt.
8 Beyond a reasonable doubt is the burden of proof applied in a
9 criminal case, and it has absolutely no application whatsoever
10 in a civil case such as this one. In this case, the two
11 burdens of proof that the jury who is selected will apply to
12 the evidence are the preponderance of the evidence and clear
13 and convincing evidence.

14 Clear and convincing evidence is not as high a burden of
15 proof as beyond a reasonable doubt, but it is a higher burden
16 of proof than the preponderance of the evidence.

17 Again, I give you these instructions because it is
18 possible that one or more of the lawyers will ask you about
19 your ability to faithfully apply these two standards, these
20 two burdens of proof to the evidence, if you're selected to
21 serve on this jury.

22 Now, before the lawyers address you and begin with their
23 questions, I'm going to ask each of you to tell me as much
24 about you as I told you about me when we started this morning.

25 Each of you have either in written form or on the screens

1 in front of you nine written questions. I'm going to ask each
2 of you to answer these questions for us one at a time, and
3 we'll begin with Panel Member No. 1 and we'll go to the very
4 end of the panel, our last panel member.

5 And let me explain to you, ladies and gentlemen, how
6 we're going to do this. We have two Court Security Officers
7 with us in the courtroom. Mr. Mitchell is in the back and Mr.
8 Turner is here in the front. They each have a handheld
9 microphone. When it is your turn to answer these questions,
10 one of These Court Security Officers will bring you a handheld
11 microphone. When you get that, please stand up -- take the
12 microphone, stand up, and then answer those nine questions.

13 And please, ladies and gentlemen, hold the microphone
14 near your mouth so that it will amplify your voices. Don't do
15 like some jurors do and hold it down in the middle of their
16 stomach or at their waist. It won't do any good down there.
17 Hold it up near your mouth. This is a large room. We've got
18 a lot of people in here. It's important that everybody hears
19 your answers.

20 Once you stand with that microphone and answer those nine
21 questions, then when you're finished, you can have a seat.
22 We'll pass the microphone to the next person, it will be their
23 turn, they'll stand, they'll answer those nine questions using
24 the microphone. And we'll go through that same process until
25 everyone on the panel has had an opportunity to answer these

1 nine questions.

2 Now, I want to say this. After that's done and after the
3 lawyers go to the podium and begin their part of the process
4 of asking you questions, they may call on one or more of you
5 individually to answer a question, probably will. If you're
6 called on individually to answer a question, please wait until
7 the Court Security Officer brings you the handheld microphone.
8 When you get it, please stand up, please hold the microphone
9 in the appropriate location, and answer the question. Then
10 hand the microphone back to the Court Security Officer and
11 have a seat.

12 That's the way we're going to do it, and we're going to
13 do it the same way for questions that may come up individually
14 later, and we'll do it in the same way that we are doing right
15 now as you answer these nine already standard or fixed
16 questions that you have before you.

17 So with that, we'll begin the process. We'll start with
18 panel member No. 1.

19 And if you will take her a microphone, Mr. Turner.

20 As soon as she gets it, we'll ask her to stand and answer
21 these nine questions for us.

22 THE PANEL MEMBER: My name is Rachael Troquille. I
23 live in Waskom, Texas. I have one child. I work for myself.
24 I clean houses. Before that, I worked for Signature Cleaning
25 for 10 years.

1 THE COURT: How long have you cleaned houses, ma'am?

2 THE PANEL MEMBER: For myself.

3 THE COURT: For yourself, yes.

4 THE PANEL MEMBER: Over a year.

5 THE COURT: Okay.

6 THE PANEL MEMBER: High school. I didn't graduate
7 high school. I dropped out.

8 I'm -- Raine Ricky is my spouse. We've been together
9 seven years. He works for Halliburton in Louisiana. He's
10 been there probably two years.

11 And this is my first time on a jury.

12 THE COURT: Thank you. Appreciate that. If you'll
13 hand the microphone next to Mr. Gunstream, No. 2.

14 If you'll proceed.

15 THE PANEL MEMBER: Yes. My name is Chris Gunstream.
16 I live here in Marshall. I have three children.

17 I used to be a -- I am a retired PGA professional. I
18 don't work anymore. I was in that profession for about 15
19 years. Before that, I am retired chief petty officer from the
20 United States Navy, 24 years of service. I have a high school
21 education.

22 My spouse is Linda Gunstream. She is not employed.

23 And this is my first time for a jury service.

24 THE COURT: All right, sir. Thank you very much.

25 If you'll hand the microphone next to Panel Member No. 3,

1 Mr. Wilder.

2 THE PANEL MEMBER: My name is Mike Wilder, and I
3 live in -- outside of Naples, Texas, in a rural area way up in
4 the northeast corner -- west corner of Cass County. I've got
5 three adult children.

6 I work for Donaldson Manufacturing Company. We make
7 filters. I'm the hydraulics guy in that division. I've been
8 in that business for 30-plus years. I have a Bachelor's and
9 MBA from Baylor University.

10 My spouse is Stacy Wilder. She's a teacher at Chapel
11 Hill Independent School District, small -- right outside of
12 Mt. Pleasant. And she has been a teacher for 10 years.

13 And prior jury service, I have been on a criminal case,
14 but --

15 THE COURT: Where was that, Mr. Wilder?

16 THE PANEL MEMBER: Cass County.

17 THE COURT: All right. How long ago was that?

18 THE PANEL MEMBER: That's been a couple of years
19 ago.

20 THE COURT: All right. That's your only prior jury
21 service?

22 THE PANEL MEMBER: Yes.

23 THE COURT: Thank you, sir.

24 Next is Panel Member No. 4, Mrs. Ragsdale.

25 THE PANEL MEMBER: I am Judy Ragsdale. I have two

1 children. I live in Linden, Texas.

2 I work for Brookshire's in Daingerfield. I'm a
3 pharmacist there. I've worked there for 15 years. I have a
4 Bachelor's in pharmacy.

5 I'm widowed, so do you want his name?

6 THE COURT: No, ma'am.

7 THE PANEL MEMBER: Okay. And I've never been on a
8 jury.

9 THE COURT: What did your husband do before he died?

10 THE PANEL MEMBER: He was a truck driver, and he was
11 retired.

12 THE COURT: Where did you get your pharmacy degree?

13 THE PANEL MEMBER: University of Oklahoma.

14 THE COURT: Thank you very much, ma'am.

15 Next is Panel Member No. 5, Mrs. Henderson?

16 THE PANEL MEMBER: My name is Ann Henderson. I have
17 two grown children. I work for Collom & Carney Clinic in
18 Texarkana, Texas. Been there 18 years as a lab technician. I
19 have a year of college.

20 My spouse's name is Sam Henderson. He works for Wellburn
21 Mechanics in Longview. He's done that for about 50 years.

22 And I've never been on a jury.

23 THE COURT: Never served on a jury.

24 THE PANEL MEMBER: No, sir.

25 THE COURT: Thank you, ma'am.

1 Next is No. 6, Mrs. Reese.

2 THE PANEL MEMBER: Betty Reese. I live here in
3 Marshall. We have five grown children between us. It's a
4 blended family.

5 Work for Hall Eye Clinic here in Marshall. I'm a medical
6 receptionist and billing clerk. I've worked there
7 four-and-a-half years. I've had a little bit of college
8 education.

9 My husband's name is Tony Reese, and he works for a
10 replacement parts warehouse out of Little Rock, Arkansas, but
11 he works all over 14 states' area here. He's been there for
12 21 years.

13 And I served on a civil case in county court here in
14 Marshall probably close to 20 years ago. It's been a while.

15 THE COURT: Never served on a jury in federal court?

16 THE PANEL MEMBER: No.

17 THE COURT: All right. Thank you very much, Mrs.
18 Reese.

19 All right. Next is No. 7, Mrs. Jarrett?

20 THE PANEL MEMBER: My name is Christina Jarrett. I
21 live in Hallsville, Texas. I have one grown son. He is a
22 freshman at LSU, proud member of the band, and he plays the
23 snares. So Go Tigers.

24 I work at Hallsville ISD. I'm a high school English
25 teacher. I have a degree in English, journalism, and

1 marketing. Also have a graduate degree in an LSU campus. So
2 Go Tigers again. I've been currently back on campus for about
3 the last seven to eight years. I took a proactive extended
4 sabbatical to be a stay-at-home mom and attended grad school,
5 and I've also taught adjunct classes for the LSU system as
6 well.

7 And what else? My husband, Ben, is from the Dallas area,
8 originally Highland Park. He was a professional fisherman,
9 then went to work in the marine industry for about 20-plus
10 years, and changed industries about five or six years ago?
11 Don't remember exactly. And he works for a company called
12 Smart Earth Technology where he's a regional director of five
13 different states. He's currently en route to California right
14 now. He's worked there, like I said, about five years.

15 I served on one criminal case, and that's about it.

16 THE COURT: What's the company do that your husband
17 now works for?

18 THE PANEL MEMBER: It's cellular technology that is
19 a water meter system.

20 THE COURT: All right. Thank you very much, ma'am.

21 All right. Next? We'll start on the second row of the
22 jury box with No. 8, Mr. Grissom.

23 THE PANEL MEMBER: Good morning. My name is Patrick
24 Grissom, born and raised in and live in Atlanta, Texas. I do
25 not have any children.

1 My current place of employment for the past year and a
2 half, I'm self-employed where me and my father are growing his
3 homemade salsa and a couple of other things. We're in the
4 process of getting that into grocery right now.

5 Before then, I spent six-plus years working with a
6 forestry consulting company out of Texarkana where we managed
7 private landowners' land and timber. Also big teemos (ph),
8 big corporate landowner, land ownership. I left all that to
9 chase the American dream and build this company with my dad.
10 So here we are with that.

11 Background education, I got a Bachelor of Science in
12 forest management from Stephen F. Austin.

13 No spouse. Last -- I've served on one jury, criminal, in
14 Cass County several years ago.

15 THE COURT: All right, sir. Thank you very much.

16 No. 9 is next.

17 THE PANEL MEMBER: My name is Rhonda Ehrlish. I
18 live in Omaha. I have one daughter. I work for Goodman
19 Insurance as an insurance agent. I've worked there for 29
20 years. I have a high school diploma.

21 I'm married to Brent Ehrlish. He works for Graphic
22 Packaging as an electrician. He's been there two years.

23 And I was on a civil jury in Titus County about 15 years
24 ago.

25 THE COURT: What was that jury about, ma'am? Do you

1 remember?

2 THE PANEL MEMBER: I don't remember. I'm sorry.

3 THE COURT: Never served on any other juries?

4 THE PANEL MEMBER: No.

5 THE COURT: Thank you very much.

6 Next is No. 10. Go ahead, please.

7 THE PANEL MEMBER: My name is Bettina Viramontes. I
8 do not talk in public very well.

9 THE COURT: Take your time.

10 THE PANEL MEMBER: I have three children. Right now
11 I am a stay-at-home mom.

12 I did -- I was in retail management for 20 years before
13 that, and a corrections officer after that. I have some
14 college.

15 My spouse's name is John Viramontes. He is a general
16 area foreman for power. He clears the tree lines for the
17 power companies throughout Texas, Arkansas, and Louisiana.
18 He's done that for the past five years.

19 And I have never served on a jury.

20 THE COURT: Does your husband actually work for the
21 electric companies or does he work for a contractor?

22 THE PANEL MEMBER: They are subcontracted through
23 the power company.

24 THE COURT: What's the name of his employer?

25 THE PANEL MEMBER: Wright Tree Service.

1 THE COURT: Thank you, ma'am. You did very well
2 speaking in public.

3 No. 11, Mr. Alexander.

4 THE PANEL MEMBER: Matison Alexander. Have two
5 grown children.

6 I work for Etex Communications, been there for 15 years.
7 Have a Bachelor's degree in electronics.

8 My wife's name is Wendy. She works for Anytime Fitness.
9 She's been there for 10 years.

10 And never served on a jury.

11 THE COURT: All right, sir. Thank you.

12 No. 12 is next, Mr. Morey.

13 THE PANEL MEMBER: My name is Brian Morey. I work
14 at O'Riley Auto Parts, been there for almost seven years.

15 I have two grown children.

16 My wife is Linda Morey. She's retired. She worked 10
17 years at East Texas Baptist University in the library.

18 I was on a grand jury about 10 years ago here in
19 Marshall.

20 THE COURT: Never served on a jury in a trial of any
21 kind.

22 THE PANEL MEMBER: No, sir.

23 THE COURT: Thank you.

24 No. 13 is next, Mr. Miles.

25 THE PANEL MEMBER: Hello. I am Tommy Miles. I live

1 in Bivins, Texas. I have three daughters.

2 And place of employment, I'm a regional network leader
3 for Owens Illinois. They are a glass container company, make
4 everything from Gerber baby food jars to beer bottles to
5 catsup bottles. Been there nine years. Before that, 31 years
6 at Libby Glass in Shreveport.

7 Went to LSU Shreveport.

8 My spouse's name is Tammy. She retired from General
9 Motors after 30 years.

10 And I was on a criminal case in Jefferson about 12, 13
11 years ago.

12 THE COURT: Is that your only prior jury service?

13 THE PANEL MEMBER: Only one.

14 THE COURT: Thank you, sir.

15 Next is No. 14, Mrs. Davis.

16 THE PANEL MEMBER: My name is Kristine Davis. I
17 live in McCloud, Texas. I have four grown children.

18 As of now, I work at Dollar General in Jefferson, Texas.
19 I've been there for 16 years. Before that was Walmart, and I
20 am a vet.

21 I have a high school education and one semester of
22 college.

23 My spouse is deceased.

24 And I have not been on jury service.

25 THE COURT: What did your husband do before he died?

1 THE PANEL MEMBER: He was actually on disability.
2 He used to build scaffolding for different companies for wells
3 and things like that.

4 THE COURT: Okay. Thank you very much, Mrs. Davis.

5 THE PANEL MEMBER: Thank you.

6 THE COURT: Next is No. 15, another Mrs. Davis.

7 THE PANEL MEMBER: My name is Melissa Davis. I have
8 three grown children. I work at Hallsville ISD. I live in
9 Longview.

10 I work at Hallsville, ISD. I'm a teacher's aide, a bus
11 driver, and then on weekends I work for Community Health Corp.
12 I work in -- with IDD adults. At the school, I've been there
13 10 years. Community Health Corp., I've been there two.

14 I've been in college for three years now.

15 And my husband's name is Michael Davis. He is a bus
16 monitor. Before that, he was a meat cutter for 30 years.

17 And I've never been on jury.

18 THE COURT: All right. Thank you, ma'am.

19 Next is No. 16, Miss McClorey.

20 THE PANEL MEMBER: Hi. My name is Elana McClorey.
21 I live in Douglassville, Texas. I don't have any children.

22 Right now I am a closing apparel associate at Wal-Mart in
23 Texarkana, Texas. I've been there for a little over two
24 years. I recently graduated college at TNUT with a Bachelor's
25 of a psychology.

1 I'm not married, and this is my first time doing jury
2 services due to college.

3 THE COURT: What was your degree in?

4 THE PANEL MEMBER: Psychology.

5 THE COURT: Thank you, ma'am.

6 No. 17 is next. Mr. Brannon?

7 THE PANEL MEMBER: My name is Stan Brannon. I live
8 in Hallsville, Texas. I have two children, one of which we
9 lost five years ago.

10 I am retired, semiretired. My wife and I do consulting
11 and advocacy work. Previous work was quality manager at a
12 local wellhead manufacturing company called Stream Flow. Did
13 that for nine years. And then prior to that was four other
14 places in heavy manufacturing. So all my experience is in
15 heavy manufacturing.

16 My education is Bachelor's degree from A&M in
17 manufacturing engineering.

18 My wife's name is Michelle Brannon. She's also a retired
19 CPA, and she is semiretired as in she does consulting as well
20 as the advocacy work with us. We have both been doing
21 full-time semiretired for two years.

22 And prior jury service, been called up to county juries
23 several times, never been selected. This is my first time in
24 fed.

25 THE COURT: Mr. Brannon, briefly tell me about this

1 consulting and advocacy stuff that you're doing.

2 THE PANEL MEMBER: Consulting work is -- because all
3 my background is in manufacturing and quality assurance, my
4 consulting work is doing quality systems implementation,
5 maintenance, and consulting.

6 THE COURT: All right.

7 THE PANEL MEMBER: My wife is a CPA, accounting,
8 financial style stuff.

9 Advocacy work is due to us losing our youngest five years
10 ago due to an accident on a local lake involving a low-hanging
11 power line. And so the purpose of our advocacy is to
12 eliminate or drastically reduce the number of power line
13 strikes from the public through various means. I mean, we've
14 got a whole mission statement and --

15 THE COURT: That's fine. You answered my question,
16 sir. Thank you very much.

17 No. 18 is next, Ms. Dale?

18 THE PANEL MEMBER: My name is Stacey Dale. I'm from
19 Waskom. I have two children.

20 I work for Lee Water Supply. I'm the office manager.
21 I've been there for seven-and-a-half years. I'm a high school
22 graduate.

23 I am divorced, and I've never served on a jury.

24 THE COURT: All right. Thank you very much.

25 Next is No. 19, Mr. Hawley?

1 THE PANEL MEMBER: Good morning. My name is Daniel
2 Hawley. I live in Big Sandy, Texas. I have one son, seven
3 weeks old today.

4 I work for the international ALERT Academy, which is
5 training school post high school for young guys to learn
6 emergency service. We do disaster relief and things like
7 that. I've worked there for approximately eight years. And
8 graduated high school and then got post high school skills
9 training as a firefighter in the MT basic.

10 My wife's name is Sarah Ann. She worked as a dental
11 assistant for approximately two-and-a-half years at Forest
12 Square Dental in Longview until the birth of our son.

13 And I have no prior jury history or service.

14 THE COURT: Thank you, sir.

15 No. 20 is next, Mrs. Carlisle?

16 THE PANEL MEMBER: My name is Sheila Carlisle, and
17 I'm from Hallsville, Texas. I have three grown children.

18 I was forced into retirement last year because I have a
19 cancer diagnosis. I worked there for 23 years at First United
20 Methodist Church in Hallsville. I was preschool director. I
21 attended two years of college in early childhood education.

22 My spouse's name is Charles, and he works at Kamatsu and
23 has been there for 40 years. He's a lead machinist.

24 And I've served on one jury about 25 years ago, a civil
25 case.

1 THE COURT: Where was that, ma'am?

2 THE PANEL MEMBER: It was in Judge Mike Smith's
3 office in Hallsville, Texas.

4 THE COURT: Justice of the peace?

5 THE PANEL MEMBER: Yes, ma'am.

6 THE COURT: Thank you very much, ma'am.

7 Next is No. 212. Mr. Mullins?

8 THE PANEL MEMBER: My name is Hunter Mullins. I
9 live in Ore City. I don't have any kids.

10 I work at C. Miller Drilling as a diesel mechanic. I
11 went through Kilgore College's automotive technician program
12 where I graduated with an Associate's.

13 Don't have any kids, don't have any spouse, and I've
14 never served on jury.

15 THE COURT: All right, sir. Thank you very, Mr.
16 Mullins.

17 No. 22 is next, Mr. Heller.

18 THE PANEL MEMBER: My name is Chris Heller. I live
19 in Gilmer. I have two daughters.

20 I work at McCoys Building. I am a CDL driver. High
21 school education.

22 My wife's name is Holly. She works at Diamond C
23 Trailers. She's a welder, and she has been there about 11
24 months.

25 And I've been on a criminal jury.

1 THE COURT: Where was that?

2 THE PANEL MEMBER: Upshur County.

3 THE COURT: And how long ago?

4 THE PANEL MEMBER: Probably three years ago.

5 THE COURT: And when you say McCoys, you are talking
6 about off of the loop over in Longview?

7 THE PANEL MEMBER: Yes, sir.

8 THE COURT: Thank you, sir.

9 Next is No. 23, Mrs. Lee.

10 THE PANEL MEMBER: My name is Carol Lee. I live in
11 Longview, Texas. I have two grown children.

12 I retired from Spring Hill State Bank, worked there 22
13 years. Had 49 years of financial industries. Finished high
14 school.

15 My husband's name is Billy Lee. He's retired. Last job
16 was at Diana Hardware, and he was there two years.

17 And I've been on a criminal case here in Harrison County,
18 grand jury in Harrison County, and federal jury in Tyler.

19 THE COURT: You served on a federal jury in Tyler?

20 THE PANEL MEMBER: Uh-huh. About 30 years ago,
21 William Wayne Justice.

22 THE COURT: Do you remember what kind of case it
23 was?

24 THE PANEL MEMBER: It was manufacturing.

25 THE COURT: All right. Thank you, ma'am.

1 Next is Panel Member, No. 24. Mr. West?

2 THE PANEL MEMBER: Good morning.

3 THE COURT: Morning.

4 THE PANEL MEMBER: My name is Tracy West. I live in
5 Waskom, Texas, lived there for 10 years. I have one adult
6 male son. Of course, he's a male. He's a son.

7 Place of employment is with Hill Oil Company, which is
8 owned by Reladyne, a large corporation. I've worked there for
9 10 years. I have high school diploma and one year of college.

10 My spouse's name is Jan. She works for Calumet Refinery.
11 She is in purchasing there, and she's worked there about five
12 years.

13 And I was on one criminal case about five years ago in
14 Waskom.

15 THE COURT: In the municipal court?

16 THE PANEL MEMBER: Yes, sir.

17 THE COURT: Thank you very much.

18 Next is No. 25, Mr. Thomas.

19 THE PANEL MEMBER: My name is Stan Thomas. I live
20 in Diana, Texas. Two kids. I own Thomas Falls Outdoor
21 Adventures and Ziplines. My wife and I work together there.
22 My education background is some college.

23 My wife's name is Debbie Thomas. She works with me
24 obviously, and she's worked with me there nine years.

25 And I have no prior jury service.

1 THE COURT: Thank you, sir.

2 No. 26 is next, Mrs. Best.

3 THE PANEL MEMBER: I am Hilary Best. I live here in
4 Marshall. I have two sons. I'm a stay-at-home mom.

5 I have an Associate of Applied Science in nursing degree.

6 My spouse's name is Brian Best. He works for ProFrac
7 here in Marshall. He's a safety supervisor, and he's been
8 there about four or five years.

9 And never served on a jury or anything.

10 THE COURT: What does ProFrac do?

11 THE PANEL MEMBER: ProFrac, they are an oil field
12 fracking company.

13 THE COURT: Okay. Thank you, Mrs. Best.

14 No. 27 is next, Mrs. Cody.

15 THE PANEL MEMBER: My name is Michelle Cody. I live
16 in Pittsburg, Texas. I have two children. One of them is 19,
17 and she is in the Army set to graduate boot camp later this
18 month. My son is a junior in high school.

19 I work at Pittsburg Elementary School. I teach English
20 language arts for third grade. I've worked there for 11
21 years, 10 years as a paraprofessional. This is my first year
22 as a full teacher. I earned my Bachelor's of General
23 Science -- General Studies, sorry, at A&M-Texarkana.

24 My spouse's name is Henry Cody. He works at Big Tex
25 Trailers as a CDL driver. He's worked there for approximately

1 13 years.

2 And I've never served on a jury.

3 THE COURT: Thank you, ma'am.

4 No. 28 is next.

5 THE PANEL MEMBER: Good morning. My name is Bruce
6 Duits. I live in Atlanta, Texas. I have five children. We
7 are a blended family. My 17-year-old daughter just graduated
8 high school early this year.

9 I'm currently employed at Cooper Tire, which is now
10 Goodyear. I've worked there since 2011. I was previously in
11 the U.S. Army, served in Desert Storm.

12 My educational background, I attended Michigan State
13 University and Austin P. State University. So I've been in
14 college probably about 14 years in total.

15 My spouse's name is Julie. She's a secretary for the
16 senior pastor for First Baptist church in Atlanta, Texas, and
17 she has worked there since 2009.

18 And I have no prior jury service.

19 THE COURT: All right, sir. Thank you very much.

20 No. 29 is next, Mrs. Barr.

21 THE PANEL MEMBER: Good morning. My name is Gina
22 Barr, and I live in Gilmer, Texas. I have three grown
23 children.

24 I work at First National Bank of East Texas. I'm the
25 human resource director there. I have a high school diploma

1 and about three years of college.

2 My spouse's name is Todd Barr. And he is semiretired
3 from the Gilmer Independent School District as a coach, and he
4 now teaches elementary PE. He's been there probably about 30
5 years. I've been at First National Bank of East Texas, I'm
6 sorry, for about two-and-a-half years.

7 And I have had prior jury service. I have been on a
8 criminal case in Tyler, Texas, Smith County, about 20 years
9 ago, and I did serve on a civil case a long time ago. I don't
10 remember anything about it, but it was actually in Smith
11 County also.

12 THE COURT: All right. It was in state court, I
13 gather.

14 THE PANEL MEMBER: I think -- yes, I think, yes, it
15 was.

16 THE COURT: Okay. Long time ago?

17 THE PANEL MEMBER: Yes. Thank you.

18 THE COURT: Thank you, Mrs. Barr.

19 Next is No. 30, Mr. Foster.

20 THE PANEL MEMBER: Good morning, sir.

21 THE COURT: Good morning.

22 THE PANEL MEMBER: My name is Steve Foster. Let's
23 see. I just moved to Jefferson in -- I was in Cass County,
24 well, Linden for 20 years, but I worked in south Texas,
25 Oklahoma, everywhere else. Two sons, a retired naval officer

1 in Colorado and an electronics engineer who is in Dallas.

2 I'm retired right now, but I did 27 years in the
3 newspaper business as a journeyman pressman, assistant
4 technician. I've been an ambulance driver, truck driver,
5 dispatch for oil field, blah, blah, blah.

6 Education GED. Associate's in computer technician.
7 About a thousand technical manuals.

8 I'm not married and no jury service.

9 THE COURT: All right. Thank you very much, Mr.
10 Foster.

11 Next is No. 31?

12 THE PANEL MEMBER: Good morning. My name is Charity
13 Boozier. I live in Longview, Texas. I have two daughters.
14 One has moved out of the house and one that is still at home
15 with us.

16 I am self-employed as a piano teacher. I am also the
17 main pianist for our church that we attend in Longview. And I
18 home school the daughter who's still at home. I've been a
19 piano teacher for 17 years and I've home schooled -- this is
20 my fourth year. I have a Bachelor of Science in industrial
21 management from LeTourneau University.

22 My husband is William Boozier. He works for McClung
23 Energy in Kilgore. He is a buyer/planner, and they are
24 somehow involved in the oil field industry, but I don't
25 understand it, so -- he has been there for almost four years.

1 And in May of 2022, I served on a criminal case just
2 across the street there for Harrison County.

3 THE COURT: Is that your only jury service?

4 THE PANEL MEMBER: That's the only time I actually
5 served, yes, sir.

6 THE COURT: You've been called before, but that's
7 the only time you actually served.

8 THE PANEL MEMBER: Yes, sir, that is correct.

9 THE COURT: Okay. Thank you, Mrs. Boozier.

10 No. 32 is next.

11 THE PANEL MEMBER: Good morning. My name is Bethany
12 Vanderford. I live in Big Sandy, Texas. I do not have any
13 children.

14 At this point I am working for the Institute in Basic
15 Life Principles. We create resources for families to help
16 them deepen their relationship with God. I do data entry
17 things there. A lot of communications as well. I've worked
18 there for about five-and-a-half years.

19 I graduated from a small Bible college with a Bachelor of
20 Arts in Christian ministry with an emphasis in women's
21 ministry.

22 I am not married, and I have had no prior jury service.

23 THE COURT: What was the name of the college you
24 attended?

25 THE PANEL MEMBER: Chambers College in Colorado.

1 THE COURT: Thank you very much, Miss Vanderford.

2 All right. No. 33 is next, Ms. Jones.

3 THE PANEL MEMBER: I'm Tamara Jones. I have two
4 kids.

5 I work as a manager for Creek Gas and Food in
6 Mt. Pleasant. I've been there for a month because they just
7 took over the company. They sold out, the previous owner. I
8 worked for them for Night and Day Food before the new company
9 took over. I have a high school diploma.

10 My husband is Cavin Dotty. He works for Advantage Home
11 Health for my mother because my mother is bedridden, and he's
12 been working there for my mother for about a year.

13 And I've been called to jury duty but never -- been
14 canceled every time before this.

15 THE COURT: You've never selected or served.

16 THE PANEL MEMBER: No, sir.

17 THE COURT: Thank you very much, Mrs. Jones.

18 Thank you, ladies and gentlemen. We appreciate that
19 information. Now, I need to say just a couple of more things
20 to you before I turn over the questioning to the lawyers.

21 The jurors that will actually be selected from this panel
22 to serve in this case will serve in the role as the judges of
23 the facts and the selected jurors in this case will make the
24 sole determination about what the facts are in this case.

25 Now, my job as the judge is to rule on questions of law,

1 evidence, and procedure, to main the decorum of the courtroom,
2 and to oversee an efficient flow of the evidence during the
3 trial.

4 Let me also say a couple of things to you about our
5 judicial system that I hope will put things in the proper
6 perspective for you. In any jury trial, besides the parties
7 themselves, there are always three participants--the jury, the
8 judge, and the lawyers.

9 Now, with regard to the lawyers, it's important for each
10 of you to understand that our judicial system is an adversary
11 system, which simply means that during the trial each of the
12 parties will seek to present their respective cases to the
13 jury in the very best light possible.

14 Now, it's no surprise to you that lawyers are sometimes
15 criticized in public, but the Court has concluded that at
16 least some of that criticism comes from a basic
17 misunderstanding of our adversary system in which the lawyers
18 act as advocates for the competing parties. And as an
19 advocate, a lawyer is ethically and legally obligated to
20 zealously assert his or her client's position under the rules
21 of our adversary system, and by presenting the best case
22 possible on behalf of their clients, the lawyers hopefully
23 will enable the jury to better weigh the relevant evidence, to
24 determine the truth, and arrive at a just verdict based on
25 that evidence.

1 This adversary system of justice has served our nation
2 well for over 200 years. America's lawyers have been, are
3 now, and will be in the future an indispensable part of that
4 process. So as we go forward with the trial, even though it's
5 possible that I may from time to time roll my eyes or growl a
6 little bit at the lawyers, it's because I'm simply trying to
7 make sure that their advocacy doesn't get outside of and go
8 beyond the bounds of our adversary system.

9 But it's important for each of you to know and those of
10 you that are selected on this jury to know that the lawyers
11 are just doing their jobs, and I think it's important for you
12 to keep that in mind as we go forward.

13 Also, ladies and gentlemen, for the eight of you that are
14 selected as jurors in this case, over the course of the trial
15 I'm going to do my very best to make sure that you have no
16 idea about what I think about the evidence in this case
17 because deciding the facts from the evidence is the jury's
18 job. It is not my job as the judge in this case. So those of
19 you selected for the jury should not take anything you see or
20 hear or you think you hear or see as coming from me as a
21 factor to consider in making your ultimate conclusions and
22 decisions about what the facts are in this case.

23 All right. At this time the lawyers will address the
24 panel. I allow each side, if they choose, to use up to three
25 minutes of their designated time to give a very high-level,

1 non-argumentative overview of what's at issue here. But then
2 they will get on to specific questions with you if they choose
3 to do that.

4 So with that, the Plaintiff may address the jury panel.

5 Mr. Ward, would you like a warning on your time?

6 MR. WARD: I would, Your Honor, if I could have a
7 five-minute warning.

8 THE COURT: I'll warn you when you have five minutes
9 remaining. You may proceed.

10 MR. WARD: Thank you.

11 Good morning. Mr. Grinstein told you my name is Johnny
12 Ward. I'm going to tell you a little bit about myself just
13 like you-all did.

14 I live in Longview, Texas. I've been practicing law over
15 there for right at 25 years. I've been out of law school for
16 28 years. I went to undergraduate at the University of
17 Oklahoma, law school at Texas Tech.

18 My wife's name is Mel. We've been married for 25 years.
19 She was a schoolteacher for five years and then stopped
20 teaching school to raise our three children who are all out of
21 the house now. She went back after they left the house and
22 got cured of that after about three years. I have been to
23 multiple jury selections where you-all are sitting, but I've
24 never been selected to be on a jury.

25 This is an important case. We need you-all's help to

1 resolve a dispute that you're going to learn we're not going
2 to resolve amongst ourselves. I represent, along with my
3 co-counsel, a company called Finesse Wireless. The gentleman
4 seated at the table, Mr. Frank Smith, is the founder of
5 Finesse Wireless. He's the inventor on the two patents
6 you-all are going to hear about, the '134 and the '775.
7 You-all filled out questionnaires and that helps speed things
8 up. We learned a lot about you. I'm going to ask questions
9 about those -- those things. And I don't think anyone had
10 heard of Finesse Wireless, which doesn't surprise me. It's
11 only five employees.

12 The patents at a very high level are basically an
13 improvement in wireless cellular communication. They help
14 reduce interference. There's a lot more that you-all are
15 going to hear about those inventions. But at a very high
16 level, that's what it's about.

17 As you-all have figured out, we are here because we
18 contend that AT&T is using this property without permission.
19 They are employing some radios in their network, and you-all
20 will hear about our contention about why those radios
21 infringe. AT&T buys that equipment from Nokia, and that's
22 part of the reason that Nokia has joined in this case.

23 They dispute that they infringe. They say, we're not on
24 our property, we're not using it. We say, you are and you owe
25 us up to \$166 million. They say, no, no, no; even if we're on

1 the property, we owe no more than a million dollars or
2 thereabouts. So big disagreement.

3 That's all I'm going to tell you about the facts. And
4 you-all might say, well, that's not a very convincing
5 argument. As His Honor just told you, this is not my chance
6 to argue to you. Although I believe strongly in the case, I
7 don't want to argue my case to you right now.

8 What I want to find out is whether or not you-all can be
9 fair and impartial in this case, to see if you're the right
10 juror for this case. Some of you might be thinking, well, if
11 I don't raise my hand, if I don't answer a question, maybe he
12 won't ask me any questions.

13 First of all, the first 20 of you, I'm going to try and
14 ask all of you something. I want to talk to each one of you.
15 I'm going to refer to you-all in the jury box as the box and
16 then the gallery, first row, second row, and the last two
17 rows. I'm probably not going to talk to the last two rows.
18 You-all are pretty safe today. I don't think that we'll get
19 to striking that far back, but we'll have to wait and see. I
20 might be speaking to you.

21 There are absolutely no wrong answers. The only wrong
22 answer is the one that you don't give. Okay?

23 The first question: When you-all found out that you were
24 going to potentially be on a jury in federal court, how many
25 of you said, I would like to be fair to the parties in this

1 case?

2 Let me ask it this way: Is there anyone that says, you
3 know what, I'm angry about being here and I'm going to take it
4 out on somebody, I don't want to be fair? Anybody?

5 We chuckle, but I'm not kidding you in March of this year
6 in this courtroom I asked that question, a gentleman raised
7 his hand, and he said he was angry about being here, he didn't
8 want to be here, and he was going to take it out on somebody.
9 Guess what happened to him. Nothing happened to him. He got
10 in no trouble. You know why? Because he told us what he was
11 thinking, he told us how he felt. And that's what we want to
12 find out. And it just means you can lean one way or the
13 other.

14 You might love your cell service with AT&T or you might
15 hate it. You might lean one way or the other because of that
16 or because some experience. That doesn't disqualify you.
17 What disqualifies you is if you lean so far that you can't
18 decide this case based upon the facts of this case. All
19 right? You can set your leanings aside and decide the case
20 based upon the facts that are going to be presented to you.
21 And that's what I want to find out about.

22 And you're going to find out I'll be talking about
23 leaning, do you lean, and can you decide the case based upon
24 the facts. You'll hear me repeat that, and those are the
25 types of questions that I'm going to be asking you.

1 And I'll start out with you-all -- the questionnaires
2 that you filled out, several people said, I've got some strong
3 feelings about AT&T, whether they were unhappy with their bill
4 or they'd had some type of negative experience. Is there
5 anyone sitting there right now that says, you know what, I've
6 had this negative experience, or I don't like my cell phone
7 bill, it's too high, that would be unable to set those
8 feelings aside and be unable to decide this case based upon
9 the evidence? Anyone sitting there right now that would be
10 unable to -- to set those types of feelings aside? All right.

11 Is everyone excited when they get their cell phone bills
12 at the end of every month? No? We don't like those, do we,
13 but we've got to pay for our service. Correct?

14 All right. Mr. Deron Dacus is the local counsel for AT&T
15 in this case. Mr. Dacus has a law firm in Tyler. He
16 practices with his wife, Shannon. Mr. Dacus and I have known
17 each other. For as long as I've been practicing law, we've
18 been against each other. He's a good lawyer.

19 But what I want to know is, does anyone know Mr. Dacus?
20 And when I say know, I'm using it in the broadest sense of the
21 term--I recognize him, he's from Gilmer, I went to high school
22 with him, I know his family, anything like that?

23 Anyone -- yes, sir. Juror No. 11. Mr. Alexander.

24 THE PANEL MEMBER: Yes, sir.

25 MR. WARD: Mr. Turner is going to hand you the

1 microphone.

2 Tell me how you know Mr. Dacus.

3 THE PANEL MEMBER: I've known him since first grade.

4 MR. WARD: Okay.

5 THE PANEL MEMBER: We went to school together. Our
6 moms taught school together.

7 MR. WARD: Okay.

8 THE PANEL MEMBER: I've known him a long time.

9 MR. WARD: That's the kind of information I need to
10 know. Hold on. I'm not through yet.

11 THE PANEL MEMBER: All right.

12 MR. WARD: I'm not through with you.

13 Let me ask you this. The fact that you know Mr. Dacus,
14 you've known him basically your whole life, do you start out
15 leaning in favor of his client or could you decide this case
16 based upon the facts of the case without regard to your
17 knowing Mr. Dacus?

18 THE PANEL MEMBER: Well, in my line of work, I do a
19 lot of cellular backhaul transport. AT&T Wireless is one of
20 my big customers, so they help pay my salary.

21 MR. WARD: Okay. So would it be difficult for you
22 to go do business with AT&T and call upon them and say, by the
23 way, I was on that jury that we awarded \$166 million against
24 you and now could I have your business?

25 THE PANEL MEMBER: Yeah, that wouldn't happen.

1 MR. WARD: All right. That's not something you feel
2 like you could do.

3 THE PANEL MEMBER: No.

4 MR. WARD: And that's an example of you might not be
5 the right juror for this case. Fair?

6 THE PANEL MEMBER: Yes, sir.

7 MR. WARD: You start out leaning in favor of AT&T
8 because of your business relationship, which I understand,
9 before you hear any evidence. Correct?

10 THE PANEL MEMBER: Correct.

11 MR. WARD: And since your livelihood depends upon
12 AT&T, in part, is that something you feel like you'd have
13 trouble setting aside in this case?

14 THE PANEL MEMBER: Possibly.

15 MR. WARD: Okay. Thank you, Mr. Alexander.

16 Anybody else in the jury box that knows Mr. Dacus or does
17 business with AT&T? I'll broaden that out a little bit.
18 Anyone in the first or second row in the gallery know Mr.
19 Dacus?

20 Mr. Heller, are you -- do you live in Gilmer?

21 THE PANEL MEMBER: Yes.

22 MR. WARD: And that's Juror No. 22.

23 Are you from that area?

24 THE PANEL MEMBER: No.

25 MR. WARD: Okay. You don't know Mr. Dacus from back

1 in high school or first grade or anything like that?

2 THE PANEL MEMBER: No. I just moved there 14 years
3 ago.

4 MR. WARD: Okay. Thank you, sir.

5 There are two other firms, and I'm going to ask you just
6 real briefly. I don't expect you'll know the lawyers there.
7 They don't practice out in East Texas or they don't live out
8 in East Texas. One is Quinn Emanuel. They represent Nokia in
9 this case. Anyone have a relationship with a law firm called
10 Quinn Emanuel? They are all over the country. You might have
11 a relative or a friend or maybe in a prior line of work you
12 were represented by Quinn Emanuel. Anybody?

13 And then AT&T is represented by Baker Botts. Some of you
14 might have heard of Baker Botts. The lawyers are from Dallas.
15 Anybody have relatives, friends, any relationship whatsoever,
16 been represented by Baker Botts in the box or in the gallery?

17 Anybody on the panel own stock in AT&T or think they
18 might own stock in AT&T?

19 THE PANEL MEMBER: No idea. My husband manages all
20 of that, so I don't know.

21 MR. WARD: Mrs. Jarrett?

22 THE PANEL MEMBER: Mrs. Jarrett, yeah.

23 MR. WARD: It's possible you do, but you don't know.

24 THE COURT: Just a minute. Mrs. Jarrett, please
25 stand up, use the microphone per my instructions.

1 THE PANEL MEMBER: Okay. Yeah, I don't look at
2 those things, so --

3 MR. WARD: Okay.

4 THE PANEL MEMBER: He does work for the company that
5 has, you know, connections with cellular devices, and I don't
6 know much about that, either.

7 MR. WARD: Okay.

8 THE PANEL MEMBER: So the company that he sells and
9 distributes and works with, it does the cellular-based device.

10 MR. WARD: While I've got you up, let me ask you,
11 you said you're an adjunct professor or you have been an
12 adjunct.

13 THE PANEL MEMBER: I have been, yes, and I've been
14 recently asked to as well, but teaching high school in an
15 EOC-tested subject, so I declined.

16 MR. WARD: What were you teaching as an adjunct
17 professor?

18 THE PANEL MEMBER: Graduate level, master's level
19 reading classes.

20 MR. WARD: Okay. On your questionnaire, we asked
21 you a question about do you have an opinion about lawsuits,
22 and you said, unsure.

23 THE PANEL MEMBER: I mean that based on a per-case
24 basis --

25 MR. WARD: Okay.

1 THE PANEL MEMBER: -- because my background is in
2 journalism. So I don't try to immediately think of anything
3 other than what's factual.

4 MR. WARD: Okay. Anything about your background in
5 journalism, keeping up with litigation maybe sometime, that
6 starts you leaning one way or the other in this case?

7 THE PANEL MEMBER: Absolutely not.

8 MR. WARD: Okay. And I think we have one other hand
9 go up. Yes. Mrs. Ehrlish, Juror No. 9.

10 And I think you were responding to my question about
11 stock?

12 THE PANEL MEMBER: Yes. We have stock in AT&T.

13 MR. WARD: You do have stock in AT&T.

14 THE PANEL MEMBER: Yes, we do.

15 MR. WARD: All right. Thank you.

16 THE PANEL MEMBER: Uh-huh.

17 MR. WARD: Okay. Mrs. Troquille, Juror No. 1.

18 I'm just going to go down the row, and try to talk to
19 many of you as I can as long as I've got a little bit of time.

20 I think on your questionnaire, you indicated that you
21 also on opinions of lawsuits, you said, unsure?

22 THE PANEL MEMBER: Uh-huh.

23 MR. WARD: Can you tell me why you said unsure?

24 THE PANEL MEMBER: I don't know. I'm just unsure.
25 I mean, I don't really --

1 MR. WARD: Okay.

2 MR. WARD: I'm sorry to talk over you.

3 THE PANEL MEMBER: You're fine. Go ahead.

4 MR. WARD: It's not that you have an opinion one way
5 or the other. Are you telling us it would depend on the case?

6 THE PANEL MEMBER: It depends on who I feel is right
7 or wrong.

8 MR. WARD: All right. We're going to get in trouble
9 because there's a court reporter taking down everything we
10 say.

11 THE PANEL MEMBER: Oh, I'm sorry.

12 MR. WARD: So if I talk over you, I get in trouble
13 because he can't understand.

14 THE PANEL MEMBER: I understand.

15 MR. WARD: Okay. This is a new experience for a lot
16 of people.

17 THE PANEL MEMBER: Uh-huh.

18 MR. WARD: So you don't start out leaning one way or
19 the other in this case.

20 THE PANEL MEMBER: I do not.

21 MR. WARD: Thank you, ma'am.

22 All right. Next to you, Mr. Gunstream, first, thank you
23 for your service, 24 years in the U.S. Navy.

24 THE PANEL MEMBER: You bet.

25 MR. WARD: You indicated on your questionnaire that

1 you felt like damages were too high.

2 THE PANEL MEMBER: Always do.

3 MR. WARD: Okay. And, again, there's no wrong
4 answer. You've heard me say that we're seeking up to \$166
5 million.

6 THE PANEL MEMBER: Correct.

7 MR. WARD: Without knowing anything about the facts
8 of this case, are your feelings about damages being too high
9 such that you say to yourself, I don't care what the facts
10 are, I could never consider an award of hundreds of millions
11 of dollars?

12 THE PANEL MEMBER: I'd never say that, never. No.
13 I just think that damages are too high because it passes on to
14 those of us who help support your clients.

15 MR. WARD: Well, my clients aren't AT&T and Nokia.

16 THE PANEL MEMBER: I understand. But either way, it
17 would it affect me some -- some way down the line.

18 MR. WARD: Okay. Given that feeling, do you start
19 leaning one way or the other about, you know what, I might not
20 be the right juror in this case because I don't think I could
21 consider damages that high?

22 THE PANEL MEMBER: I don't think I would say I lean
23 either one way or the other. I just think that the damages
24 are a little bit high. I'll say that.

25 MR. WARD: Okay. But it doesn't start you leaning

1 in this case.

2 THE PANEL MEMBER: No.

3 MR. WARD: All right. Thank you, Mr. Gunstream.

4 THE PANEL MEMBER: Uh-huh.

5 MR. WARD: Who agrees with Mr. Gunstream, just raise
6 your hand in the box, that feel like damages are too high?
7 Juror No. 5, 9, 10, 11, and 12.

8 Let me ask you the same questions. Any of you feel that
9 because of your opinion that damages are too high, that you
10 could not consider the full range of damages in this case?

11 And I'll start with you, Juror No. 12, Mr. Morey.

12 THE PANEL MEMBER: Yeah. I'd have a hard time
13 giving that much.

14 MR. WARD: Okay. Regardless of what the evidence
15 was?

16 THE PANEL MEMBER: Yes. That's just too much money.

17 MR. WARD: Too much money. And regardless of what
18 the facts were, you're saying, I couldn't do it regardless of
19 what the facts are or what the evidence --

20 THE PANEL MEMBER: Not -- not that much.

21 MR. WARD: Okay. That's the kind of the information
22 we need to know.

23 Juror No. 11, I think I've talked to you.

24 Juror No. 10, did you also raise your hand about damages
25 too high?

1 THE PANEL MEMBER: Yes, sir.

2 MR. WARD: And same question. Is it a feeling that
3 I feel like damages are too high, but I could consider the
4 evidence in this case, or I don't care what the evidence is, I
5 could never consider an award of damages --

6 THE PANEL MEMBER: I could still consider.

7 MR. WARD: You could still consider it?

8 THE PANEL MEMBER: Yes. I just feel like it's too
9 high.

10 MR. WARD: Pardon?

11 THE PANEL MEMBER: It's too much. I just feel like
12 it's too much, but it wouldn't hinder me making a decision for
13 what's right or what's wrong.

14 MR. WARD: Okay. All right. Thank you, ma'am.

15 And next to you, Mrs. Ehrlish, let me ask you that same
16 question. You felt like damages are too high. Is it a
17 feeling that's so strong that you could never consider that
18 amount of damages regardless of the evidence, or do you think
19 you could set that feeling aside and decide this case based
20 upon the evidence?

21 THE PANEL MEMBER: I can set that aside.

22 MR. WARD: Okay. Thank you, ma'am.

23 First and second row, anyone agree with what Mr. Morey
24 said, that he feels like damages are too high and there is no
25 way he could consider an award in the hundreds of millions of

1 dollars regardless of the evidence?

2 Anyone in the first -- yes, sir, Mr. Heller?

3 THE PANEL MEMBER: I believe -- I believe it can be
4 unsettled, but I would just like to know why that amount or
5 why that high of amount.

6 MR. WARD: And those of you that make it on the jury
7 panel are going to hear that -- that evidence, and this isn't
8 the chance I get to tell you.

9 All I can tell you is that we're seeking a large damage
10 award, and what I need to know is whether or not your feelings
11 about damages would override your ability to listen to the
12 evidence and consider that evidence.

13 THE PANEL MEMBER: No.

14 MR. WARD: Okay. You could consider the evidence
15 and base your decision on that evidence.

16 THE PANEL MEMBER: Yes.

17 MR. WARD: All right. Thank you, Mr. Heller.

18 Mr. Wilder, good morning.

19 THE PANEL MEMBER: Good morning.

20 MR. WARD: You indicated that you'd been on a
21 criminal jury. Is that right?

22 THE PANEL MEMBER: Yes.

23 MR. WARD: And were you the foreperson in that case?

24 THE PANEL MEMBER: No.

25 MR. WARD: Okay. You also indicated that you'd been

1 a plaintiff in a corporate dissolution case.

2 THE PANEL MEMBER: Yes.

3 MR. WARD: How long ago was that about?

4 THE PANEL MEMBER: Twenty-five years.

5 MR. WARD: Okay. Anything about that experience
6 that starts you leaning one way or the other before you hear
7 the evidence in this case?

8 THE PANEL MEMBER: No.

9 MR. WARD: You didn't have a negative experience or
10 a positive experience. It's just something that you could
11 decide this case based upon the evidence in this case?

12 THE PANEL MEMBER: Yes.

13 MR. WARD: Is that correct?

14 THE PANEL MEMBER: Correct.

15 MR. WARD: All right. Thank you, sir.

16 Next to you, Juror No. 4, Mrs. Ragsdale, good morning.

17 THE PANEL MEMBER: Good morning.

18 MR. WARD: You're a pharmacist?

19 THE PANEL MEMBER: Yes, sir.

20 MR. WARD: Up in --

21 THE PANEL MEMBER: Daingerfield.

22 MR. WARD: In Daingerfield at the Brookshire's. Is
23 that correct?

24 THE PANEL MEMBER: Yes, sir.

25 MR. WARD: How long have you been there?

1 THE PANEL MEMBER: 15 years.

2 MR. WARD: Do you know my friend, Kenny Powers?

3 THE PANEL MEMBER: Yes, sir.

4 MR. WARD: Good man.

5 THE PANEL MEMBER: Yes, sir.

6 MR. WARD: Before you were a pharmacist, I think you
7 indicated on your questionnaire that you'd work for AirBorn
8 Electronics?

9 THE PANEL MEMBER: Yes, sir.

10 MR. WARD: Building circuits?

11 THE PANEL MEMBER: Uh-huh. That's when I was in
12 college.

13 MR. WARD: Did you have any dealings with something
14 called passive intermodulation, PIM.

15 THE PANEL MEMBER: I'm not sure what all our
16 parts were. I know some of them went to mines and things like
17 that.

18 MR. WARD: Okay. But PIM isn't something that rings
19 a bell in your mind.

20 THE PANEL MEMBER: No. It's been many years ago.

21 MR. WARD: Okay. Anything that you've heard so far,
22 the other questions that I've asked folks, where you'd say,
23 based upon what he's saying, I might lean one way or the
24 other in this case?

25 THE PANEL MEMBER: No, sir.

1 MR. WARD: All right. You're starting out both
2 sides are equal. I'm sorry. Mrs. Ragsdale, are both sides
3 starting out equal?

4 THE PANEL MEMBER: Yes, sir.

5 MR. WARD: All right. Thank you, ma'am.

6 Next to you, Mrs. Henderson. I think you indicated you
7 were a lab tech or are a lab tech at Collom & Carney.

8 THE PANEL MEMBER: Yes, sir.

9 MR. WARD: You are a phlebotomist?

10 THE PANEL MEMBER: I actually am a full lab
11 technician. I can do everything the technologists do.

12 MR. WARD: Okay. How long have you been doing that,
13 18 years?

14 THE PANEL MEMBER: I've been with the company 18
15 years, but I've been in the medical business for 30.

16 MR. WARD: And that was my question, what you did
17 before Collom & Carney?

18 THE PANEL MEMBER: I worked pre-cert receptionist,
19 ER.

20 MR. WARD: Okay. Anything about your life
21 experience or the things you've heard so far that would be
22 responsive to me that would be saying, you know what, I'm
23 leaning one way or the other in this case?

24 THE PANEL MEMBER: No, sir.

25 MR. WARD: We're starting out equal?

1 THE PANEL MEMBER: Yes, sir.

2 MR. WARD: All right. Thank you, ma'am.

3 Next to you, Mrs. Reese. Good morning, ma'am.

4 THE PANEL MEMBER: Good morning.

5 MR. WARD: I think on your questionnaire, you said
6 you had some special training in IT?

7 THE PANEL MEMBER: Just part of the college that I
8 did was just an introduction to computers, and then years ago
9 my employment, I was kind of like our IT person at work. It
10 was on a mainframe system so it's been a while.

11 MR. WARD: It's been a while? Well, I'm the kind of
12 person, when I need help, I call somebody. All right? Are
13 you the person that everyone calls?

14 THE PANEL MEMBER: I still doodle with it and, yeah,
15 a lot of times I help people out.

16 MR. WARD: All right. Anything that you've heard so
17 far that you would say, you know what, I'm leaning one way or
18 the other?

19 THE PANEL MEMBER: No, sir.

20 MR. WARD: We're starting out equal.

21 THE PANEL MEMBER: Equal.

22 MR. WARD: All right. Thank you.

23 I've spoken with Mrs. Jarrett.

24 Let's go to Mr. Grissom, Mr. Turner, Juror No. 8.

25 Maybe I -- did you have your hand raised when talking about

1 damages being too high?

2 THE PANEL MEMBER: No, sir. No, sir.

3 MR. WARD: Okay. On your questionnaire, I had a
4 note here that said that you felt like damages were too high.
5 Did I get that wrong?

6 THE PANEL MEMBER: I may have just misunderstood the
7 question on the questionnaire.

8 MR. WARD: Okay.

9 THE PANEL MEMBER: But damages, to your question, it
10 doesn't -- that amount of money does not bother me one bit.

11 MR. WARD: Okay. You also indicated on your
12 questionnaire that if you have a claim, you better bring it?

13 THE PANEL MEMBER: Yeah.

14 MR. WARD: What did you mean by that?

15 THE PANEL MEMBER: If you're going to -- in this
16 case, I mean, you-all are, you know, have a claim towards AT&T
17 that they're using some of your technology, and if -- I mean,
18 if you're going to go to the point of, you know, coming to
19 trial, I mean, I would assume you got a pretty good argument
20 so you're probably going to bring it.

21 MR. WARD: All right. They might disagree with me.
22 I think we do, but the jury will figure that out.

23 THE PANEL MEMBER: Yes, sir.

24 MR. WARD: Thank you, sir.

25 Let's go to Mr. Miles, Juror No. 13, Mr. Turner.

1 THE PANEL MEMBER: Yes, sir.

2 MR. WARD: I think you had indicated on your
3 questionnaire that you've been in a juror in a criminal
4 case --

5 THE PANEL MEMBER: Yes.

6 MR. WARD: -- involving drugs?

7 THE PANEL MEMBER: Yes, drugs.

8 MR. WARD: Were you the foreperson in that case?

9 THE PANEL MEMBER: No.

10 MR. WARD: Did you render a verdict?

11 THE PANEL MEMBER: Yes.

12 MR. WARD: Guilty? Innocent?

13 THE PANEL MEMBER: It was guilty.

14 MR. WARD: All right. Anything about your
15 experience or anything that you've heard so far where you'd be
16 saying, Mr. Ward needs to know I'm leaning one way or the
17 other in this case?

18 THE PANEL MEMBER: Not at all.

19 MR. WARD: We start out equal.

20 THE PANEL MEMBER: A hundred percent.

21 MR. WARD: All right. Next to you, Juror No. 14,
22 Mrs. Davis.

23 THE PANEL MEMBER: Hello.

24 MR. WARD: Good morning. Eleven years in the U.S.
25 Army?

1 THE PANEL MEMBER: Yes, sir.

2 MR. WARD: Okay. Thank you for your service.

3 THE PANEL MEMBER: Thank you.

4 MR. WARD: What type of helicopters did you work on?

5 THE PANEL MEMBER: UH-1 Hueys.

6 MR. WARD: Okay. Did you enjoy that?

7 THE PANEL MEMBER: Oh, yes.

8 MR. WARD: All right. Anything about -- anything
9 that you've heard so far where you'd say, Mr. Ward needs to
10 know I'm leaning one way or the other in this case?

11 THE PANEL MEMBER: No, sir.

12 MR. WARD: We're starting out equal.

13 THE PANEL MEMBER: Yes, sir.

14 MR. WARD: Thank you, ma'am.

15 Juror No. 15, another Mrs. Davis, she's in -- thank you,
16 Mr. Mitchell.

17 Good morning.

18 THE PANEL MEMBER: Good morning.

19 MR. WARD: You said you've been in college for three
20 years?

21 THE PANEL MEMBER: Yes.

22 MR. WARD: What are you studying?

23 THE PANEL MEMBER: Elementary education.

24 MR. WARD: Same question that I've been asking
25 folks: Anything that you've heard so far that you need to

1 tell me, Mr. Ward needs to know I'm leaning?

2 THE PANEL MEMBER: No, sir.

3 MR. WARD: We're starting out equal?

4 THE PANEL MEMBER: Equal.

5 MR. WARD: Thank you, ma'am.

6 Next to you, Juror No. 16, Miss McClorey.

7 THE PANEL MEMBER: Hi.

8 MR. WARD: Hi. On your questionnaire, you said
9 damage awards, if you had an opinion, I think you said it
10 depends.

11 THE PANEL MEMBER: Yeah. I totally -- I already did
12 that after work. I got home at like 12:00 that night.

13 MR. WARD: It was tiny print?

14 THE PANEL MEMBER: I would have to say, at the time
15 I was just reading through it. So I was, like, waiting until
16 I got here to, like, figure out what was going on. I think
17 the damages that needed to be rewarded after hearing just this
18 little bit is a little high, but not to persuade me to one
19 direction.

20 MR. WARD: Are you telling me that if the evidence
21 supported it, you could consider it?

22 THE PANEL MEMBER: Yes.

23 MR. WARD: It's not a situation like Mr. Morey told
24 us where it doesn't matter what the evidence is, it's just too
25 much money, he could never consider it regardless of the

1 evidence. That's not what you're telling me?

2 THE PANEL MEMBER: No. In my opinion, I'm kind of
3 leaning towards them because you have physical evidence behind
4 you that you showed us of the patent, but the damages that
5 you're wanting aren't pushing me in any way.

6 MR. WARD: No one's going to disagree that \$166
7 million is a lot of money. Right? We can all agree on that.
8 All right? What you're telling me is we are starting out fair
9 before you've heard evidence?

10 THE PANEL MEMBER: Yes war.

11 MR. WARD: Start out equal?

12 THE PANEL MEMBER: Uh-huh.

13 MR. WARD: Thank you, ma'am.

14 Mr. Brannon, I think you also indicated that you had an
15 opinion about lawsuits, that they're frivolous?

16 THE PANEL MEMBER: Yes, sir.

17 MR. WARD: Damages too high.

18 THE PANEL MEMBER: Yeah.

19 MR. WARD: And, again, there's no wrong answers.

20 What I need to know is, do you start leaning one way or the
21 other before you start hearing evidence in this case?

22 THE PANEL MEMBER: No.

23 MR. WARD: We start out equal.

24 THE PANEL MEMBER: We start out equal.

25 MR. WARD: And you could consider the full range of

1 damages?

2 THE PANEL MEMBER: Correct.

3 MR. WARD: All right. Thank you, sir.

4 Next to you, Ms. Stacey. I don't think we had a juror
5 questionnaire from you, but you just told us you worked at Lee
6 Water Supply?

7 THE PANEL MEMBER: Yes.

8 MR. WARD: You've been there seven years?

9 THE PANEL MEMBER: Seven and a half.

10 MR. WARD: Okay. And what did you do before that?

11 THE PANEL MEMBER: I worked in the medical office
12 doing -- I was a receptionist.

13 MR. WARD: Okay. Anything that you've heard so far
14 where you'd say, I need to respond to that question and Mr.
15 Ward needs to know that I'm leaning one way or the other?

16 THE PANEL MEMBER: No, sir.

17 MR. WARD: We're starting out equal?

18 THE PANEL MEMBER: Yes, sir.

19 MR. WARD: All right. Thank you, ma'am.

20 Juror No. 19, Mr. Hawley.

21 THE COURT: You have five minutes remaining,
22 counsel.

23 MR. WARD: Thank you, Your Honor.

24 Good morning.

25 THE PANEL MEMBER: Good morning, sir.

1 MR. WARD: On your questionnaire, I think you
2 indicated that you worked as an insurance examiner in the
3 state of Missouri?

4 THE PANEL MEMBER: I don't believe so.

5 MR. WARD: That's the problem with all my little
6 handwritten notes. What did you do before -- are you at ALERT
7 Academy?

8 THE PANEL MEMBER: Correct, yes.

9 MR. WARD: Okay. What did you do before?

10 THE PANEL MEMBER: I went to training there as well.
11 And then before that, I just worked as a farm hand in southern
12 Ontario.

13 MR. WARD: Okay. What brought you to Texas?

14 THE PANEL MEMBER: For the training and -- yeah.

15 MR. WARD: You came and stayed.

16 THE PANEL MEMBER: Correct.

17 MR. WARD: A little bit warmer than Ontario?

18 THE PANEL MEMBER: Quite a bit, yes.

19 MR. WARD: Okay. Anything that starts you leaning
20 one way or the other?

21 THE PANEL MEMBER: No. Just can't fathom that
22 amount of money, but nothing in particular.

23 MR. WARD: Okay. But even though you can't fathom
24 it, could you consider that amount if the evidence supported
25 it?

1 THE PANEL MEMBER: If the evidence supported, yes.

2 MR. WARD: Okay.

3 THE PANEL MEMBER: Believe so.

4 MR. WARD: All right. Thank you, sir.

5 And then, Mrs. Carlisle, real quick, Juror No. 20. I
6 think you indicated that you had a friend who had a patent
7 application?

8 THE PANEL MEMBER: Yes. They're in the process of
9 it. It's a doctor friend of ours, and they're trying to
10 patent a device that will help kidney dialysis.

11 MR. WARD: Okay. Anything about that that starts
12 you leaning one way or the other?

13 THE PANEL MEMBER: No, because I don't know that
14 much about it.

15 MR. WARD: Okay. Anything that you've heard so far
16 that starts you leaning one way or the other?

17 THE PANEL MEMBER: No.

18 MR. WARD: Could you consider the evidence and
19 consider the full range of damages if the evidence supported
20 it?

21 THE PANEL MEMBER: Yes.

22 MR. WARD: All right. Thank you, ma'am.

23 Let me wrap up with this. One thing that I think His
24 Honor will instruct you in a patent infringement case is that
25 you don't have to have knowledge of the patent to be held

1 responsible for patent infringement. All right? You don't
2 have to know about the patent.

3 Some people say, you know what, that might be the law,
4 but if you're seeking damages of \$166 million, you're going to
5 have to prove to me that AT&T knew about this patent before
6 the lawsuit was filed. All right?

7 So that's my question. Anyone on the panel or anyone in
8 the jury box who says, if you're going to seek that much money
9 in damages, I don't care what the law is, you're going to have
10 to prove to me that they knew about the patent claims before
11 they started using these products that we say infringe?

12 Anybody in the jury box? Anybody in the first or second
13 row?

14 And if you think about it, it's kind of like if
15 ExxonMobil came out and they drilled a well next to your
16 property and they struck oil and they started taking your oil
17 and gas, do you think it would be reasonable for them to come
18 in and say, oh, well, we didn't know that was your property,
19 we've been taking the oil and gas for six years, but we didn't
20 know it was your property? That wouldn't be a very good
21 defense, would it?

22 Anybody on the jury think that that would be a good
23 defense for ExxonMobil?

24 Juror No. 13, Mr. Miles, what do you think about that as
25 a defense, we didn't know it was your property?

1 THE PANEL MEMBER: It's too easy to find out who
2 owns the property.

3 MR. WARD: All right.

4 THE PANEL MEMBER: That should have been done
5 beforehand.

6 MR. WARD: Patent cases are the same. That's why
7 the law says you don't have to know about patents to be held
8 liable for infringement. Could you apply that law? Could you
9 follow it?

10 THE PANEL MEMBER: Yes.

11 MR. WARD: Thank you.

12 First or second row, anyone disagree that, to consider
13 that amount of money, you're going to have to prove to me that
14 AT&T knew about these patents before I will award you \$166
15 million?

16 No. 17, Mr. Brannon, let me ask you that -- that
17 question.

18 THE PANEL MEMBER: No.

19 MR. WARD: No?

20 THE PANEL MEMBER: No, you don't have to prove that
21 to me.

22 MR. WARD: Okay. You could follow the --

23 THE PANEL MEMBER: Follow the evidence.

24 MR. WARD: If I'm correct and the Court instructs
25 the jury that's seated in this case that to be held

1 responsible for patent infringement, you don't have to prove
2 that the Defendant knew about your patent, you could follow
3 that law?

4 THE PANEL MEMBER: Yes, sir.

5 MR. WARD: All right. Anyone disagree with Mr.
6 Brannon, that they would be unable to follow that law?

7 THE COURT: Time's expired, counsel.

8 MR. WARD: All right. Thank you very much for your
9 time. We look forward to presenting our case to the eight of
10 you that are seated on this panel.

11 THE COURT: Mr. Dacus, you may address the panel on
12 behalf of Defendant and intervenor. Would you like a warning
13 on your time?

14 MR. DACUS: If you'd let me know when I have five
15 minutes, please, Your Honor.

16 THE COURT: I will do that. You may proceed,
17 counsel.

18 MR. DACUS: Thank you.

19 Good morning. As I said earlier, I'm Deron Dacus and I
20 represent AT&T and Nokia in this case.

21 The first thing I want to do is say to you on behalf of
22 the men and women who work at AT&T and Nokia a very sincere
23 thanks. It is not at all lost on us that you have other
24 things you need to be doing today. You need to be at your
25 job, you need to be tending to kids and grandkids. We realize

1 that this is an inconvenience, and I want to tell you up front
2 we would not be here if this was not an important case. It is
3 to AT&T and Nokia.

4 I feel like I need to do the same thing that everyone in
5 the courtroom's done, and that is tell you a little bit about
6 myself. I wish it was interesting enough that someone was
7 going to make a movie or write a book. Unfortunately, it's
8 not.

9 As you already heard, I grew up in Gilmer, graduated from
10 Gilmer High School, was fortunate enough to get a baseball
11 scholarship and go to Texas A&M. I know we've got a few LSU
12 participants in here and I'm going to need to talk about that
13 before we're done.

14 After, I was fortunate enough to graduate from A&M and,
15 like His Honor, went to Baylor Law School where I met my wife
16 who was also in law school. We've been married now for 28
17 years. We've got two kids. They are out of the house now,
18 making their own way in life. And we're empty nesters, and
19 that's -- for anyone who's also experiencing that, that's a
20 new -- that's a new event and trying to figure out exactly
21 what I'm supposed to be doing now that I'm not chasing kids at
22 sporting events.

23 His Honor said that he gives us just a couple of minutes
24 to say a few things about the case, and so I want to do that
25 because you've heard a little bit from the Plaintiff Finesse's

1 perspective. You already heard that Finesse sued AT&T in this
2 case related to some equipment, essentially a radio that goes
3 on a cell tower that AT&T uses. That radio equipment is made
4 by Nokia.

5 And so after AT&T got sued, as the Judge told you, Nokia
6 voluntarily came to the court, did what we call intervene, and
7 they're here to defend their product because they do not
8 believe that they infringe or use these patents.

9 As Mr. Ward said, it's not the time for me to talk to you
10 about the evidence, but I will say to you that at the end of
11 this week, what we believe the evidence will show is that
12 these radios that Nokia makes and AT&T uses, they do not
13 infringe, meaning they don't use this -- this patented method
14 that Finesse has.

15 In addition to that, you may remember from the video, I
16 know you heard it last Friday rather than this morning, and
17 you'll hear more from Your Honor about it, the jury is the
18 last resort for whether or not a patent is valid. That may
19 have been news to you when you heard it on the video last
20 week.

21 What we believe the evidence will show in this case is
22 that these two patents should have never been issued. You
23 heard from the video that it has to be a new or a novel
24 concept, and we believe that these were not new and novel and
25 the patents not valid.

1 THE COURT: Let's get on to specific questions,
2 counsel.

3 MR. DACUS: Absolutely, Your Honor. Thank you.

4 So I want to do what Mr. Ward did, and that is, Mr.
5 Ward's from Longview. I know we have some folks from
6 Longview. Anyone else or does anyone know Mr. Johnny Ward?
7 If you do, would you raise your hand and let me know? Okay.

8 Also at their table is Andrea Fair. Ms. Fair also lives
9 in Longview. Does anyone know Ms. Fair? Okay.

10 And then, finally, the other lawyers at that table work
11 at Susman Godfrey. That's a firm down in Houston. They have
12 offices in other places. Anyone familiar with, know anything
13 about, the Susman Godfrey firm? Would you raise your hand and
14 let me know that? Okay.

15 Now, I'll ask a silly question. It won't be the last one
16 probably. How many people have heard of AT&T? Okay. That's
17 pretty much everybody. I think Mr. Ward touched on it, but he
18 also touched on the fact that most of us get cell phone bills.
19 Most of us have cell phones and most of us get cell phone
20 bills. And probably most of us aren't happy to get the bill,
21 but it's part of the service.

22 So what I need to know is, since I represent AT&T, does
23 someone have any unfavorable feelings, unfavorable leanings in
24 any way towards either AT&T and Nokia? Would you raise your
25 hand and just let me know. You understand why I'm asking

1 that. Right? Does anybody have those types of feelings?

2 Okay.

3 Let me ask this. And before I ask it, let me say that
4 I'm not going to ask you any details about it and I'm not
5 asking in a formal setting, but has anyone here ever been
6 falsely accused? I mean, I'm just talking about just in your
7 everyday life. Generally I get a lot of hands for people to
8 say, yeah, I've been falsely accused of things. Who's been
9 falsely accused? Lots of people. Right? I'm not talking
10 about in a courtroom.

11 So let me talk to you, Mrs. Reese, if I could, please,
12 ma'am. I told you up front I'm not going to ask details so
13 don't start telling me any. All I want to know is how did it
14 make you feel?

15 THE PANEL MEMBER: I was hurt.

16 MR. DACUS: Okay. Did you feel like you had the
17 right to defend yourself?

18 THE PANEL MEMBER: I did.

19 MR. DACUS: Okay. Did you defend yourself?

20 THE PANEL MEMBER: In the situation, I couldn't.

21 MR. DACUS: Okay. Was that frustrating?

22 THE PANEL MEMBER: Yes.

23 MR. DACUS: You understand that, fortunately, AT&T
24 and Nokia, they have an avenue to defend themselves here in
25 this federal courthouse. Do you understand that?

1 THE PANEL MEMBER: Yes, sir.

2 MR. DACUS: Do you fault them in any way for coming
3 to the courthouse when they believe they've been falsely
4 accused and defending themselves?

5 THE PANEL MEMBER: No, sir.

6 MR. DACUS: Okay. Does anybody -- and actually,
7 Miss McClorey, let me ask you, because you said something a
8 minute ago that piqued my interest: Do you think AT&T and
9 Nokia have the right to come to the courthouse and defend
10 themselves if they believe they've been falsely accused?

11 THE PANEL MEMBER: Yes.

12 MR. DACUS: Okay. And here's why I asked that.

13 THE PANEL MEMBER: Uh-huh.

14 MR. DACUS: I heard you say a minute ago that -- Mr.
15 Ward got up here and waved those patents around, that maybe
16 you sort of lean that way because he waved a patent around.
17 Did I hear you right?

18 THE PANEL MEMBER: Yes.

19 MR. DACUS: Okay. You understand what they have to
20 show is not just that they have a patent, but that these
21 radios they accuse of infringement actually use their patented
22 technology. You understand that?

23 THE PANEL MEMBER: Yes.

24 MR. DACUS: And so what I need to know from you is,
25 would you, if you sat on this jury, would you be willing to

1 sit and listen to the evidence before you made a decision?

2 THE PANEL MEMBER: Yes.

3 MR. DACUS: Okay. So even though -- and you
4 understand I've got to go home and sleep tonight. Right?

5 THE PANEL MEMBER: Yes.

6 MR. DACUS: So when you say, I'm kind of leaning
7 that way, what you're -- although you said that, you really
8 would just wait until you hear the evidence before you make a
9 decision. Is that right?

10 THE PANEL MEMBER: Yes.

11 MR. DACUS: Okay. Thank you very much.

12 Does anybody fault AT&T and Nokia for defending
13 themselves? I mean, every now and then people raise their
14 hand and say, yeah, we shouldn't be here. Okay. Very good.

15 Mrs. Davis, can I ask you a question, please, ma'am?

16 THE PANEL MEMBER: Yes, sir.

17 MR. DACUS: Did I hear you say you had four kids?

18 THE PANEL MEMBER: Four adult children, yes, sir.

19 MR. DACUS: All right. Boys or girls?

20 THE PANEL MEMBER: I had all girls, and I have 11
21 grandkids, six boys, five girls.

22 MR. DACUS: Well, congratulations. You heard me say
23 I'm an empty nester. I didn't tell you the truth. I'm ready
24 for some grandkids myself.

25 THE PANEL MEMBER: Well, I got one of those families

1 living with me, and they've got the five kids.

2 MR. DACUS: Let me ask you this: When those four
3 girls were growing up, did they ever get in little squabbles
4 or scuffles when they were growing up?

5 THE PANEL MEMBER: Yes, sir, being there was 11
6 years between the oldest set of two and the youngest set.

7 MR. DACUS: And here's what I want to know. I bet I
8 know the answer, but when they got in little squabbles or
9 scuffles and they got caught doing so, did they run to you to
10 tell their story first?

11 THE PANEL MEMBER: One or the other would usually
12 try to, yes, sir. But I'd probably end up punishing both. I
13 can't remember.

14 MR. DACUS: And here's why I ask that. It's not
15 just to know about your family affairs, but there's something
16 inside of us that tells us, even as a kid, that we want to
17 tell our story first because we think people will believe it
18 if we get to tell our story first. Do you agree with that?

19 THE PANEL MEMBER: Yes, sir.

20 MR. DACUS: Here's what's going to happen in this
21 courtroom. Well, let me ask you this: Did you always just
22 believe what that first kid told you and just accept that
23 story?

24 THE PANEL MEMBER: No, sir. I always looked at both
25 sides.

1 MR. DACUS: I figured you were a good mom like that.
2 Okay. And that's my point here. These people brought this
3 lawsuit, they're going to get to go first, they're going to
4 get to stand up just the way the Court's rules work, they're
5 going to get to stand up, tell their story first, we're going
6 to have to sit there quietly while we do.

7 Can you, like you did with your daughters, can you wait
8 until you hear both sides of the story before you make a
9 decision?

10 THE PANEL MEMBER: Yes, sir.

11 MR. DACUS: Okay. Sounds like you've done that in
12 the past so you've got practice with it.

13 THE PANEL MEMBER: Yes, sir.

14 MR. DACUS: Okay. Thank you.

15 THE PANEL MEMBER: You're welcome.

16 MR. DACUS: Here's what I want to know from
17 everyone. This is an important question. We are going to
18 have to sit here for a couple of days and just bite our
19 tongue. Can everyone agree -- and I want to know by raising
20 your hand, if you would, can everyone agree that you will wait
21 to hear both sides of the evidence before you make a decision?
22 Can you raise your hand and let me know that you'll do that?

23 Mr. Grissom, you were a little slow there.

24 THE PANEL MEMBER: Sometimes I just --

25 MR. DACUS: Let Mr. Turner bring the microphone to

1 you, if you would, please, sir.

2 THE PANEL MEMBER: Sorry about that, sir. I wasn't
3 trying to speak out of turn.

4 I was slow to raise the hand. Sometimes I tend to lean
5 towards the little man and the underdog of the bite.

6 MR. DACUS: I appreciate your honesty. I am very
7 appreciative of you raising that issue because I want to ask
8 you a question about it.

9 THE PANEL MEMBER: Sure.

10 MR. DACUS: So you heard Mr. Ward say that Finesse
11 has five employees. Right?

12 THE PANEL MEMBER: Yes, sir.

13 MR. DACUS: You think AT&T has more than five?

14 THE PANEL MEMBER: Oh, just a few.

15 MR. DACUS: Okay. Just a few. So that's -- we're
16 laughing about it, but it's serious. Right?

17 THE PANEL MEMBER: Sure.

18 MR. DACUS: Because of that fact, would you lean a
19 little bit, even a little bit, in their favor because they're
20 a smaller company than AT&T and Nokia?

21 THE PANEL MEMBER: Yes, sir.

22 MR. DACUS: Okay. Would that leaning be enough
23 that, as a lawyer for AT&T and Nokia, I should be worried
24 about it?

25 THE PANEL MEMBER: Yes, sir.

1 MR. DACUS: Okay. Is your lean far enough that you
2 put them far enough ahead to start with that, no matter what
3 the evidence is, you could not render a verdict?

4 THE PANEL MEMBER: I'm not that far. No, sir.

5 MR. DACUS: You're down the path, but you hadn't
6 gone over the cliff.

7 THE PANEL MEMBER: That's right. Just leaning.

8 MR. DACUS: I very much appreciate --

9 THE PANEL MEMBER: Yes, sir.

10 MR. DACUS: -- you being honest with me?

11 THE PANEL MEMBER: Sure.

12 MR. DACUS: Thank you, sir.

13 Who feels like Mr. Grissom? Because, look, this is --
14 Finesse is a smaller company; AT&T and Nokia are larger, more
15 successful companies. Who feels like they lean towards the
16 smaller company? Raise your hand and let me know if you're in
17 that category.

18 Let's see. Mr. Morey, you'd be in that category? Let
19 Mr. Turner bring you the microphone, please, sir.

20 You'd be in that category?

21 THE PANEL MEMBER: Yes, sir.

22 MR. DACUS: So although you feel like they're asking
23 for too much money, you still might lean towards them because
24 they are smaller than AT&T and Nokia. Am I understanding you
25 correctly?

1 THE PANEL MEMBER: Yes, sir.

2 MR. DACUS: Is your leaning so far that you feel
3 like you couldn't be fair and listen to the evidence?

4 THE PANEL MEMBER: No, sir.

5 MR. DACUS: Okay. You'd be willing -- even though
6 you lean that way, you'd be willing to listen to the evidence
7 and just render a verdict based on the evidence?

8 THE PANEL MEMBER: Yes, sir.

9 MR. DACUS: Thank you very much, sir. Appreciate
10 you being honest with us.

11 Anyone else in that category that you'd lean towards the
12 small guy? I see hands in the back. I tell you what I'm
13 going to do. As Mr. Ward said, you-all are pretty safe today
14 so I'm not going to take up everybody's time, but I appreciate
15 you letting me know that.

16 Let's see. There's some individuals -- Mrs. Ragsdale,
17 can I speak with you, please, ma'am?

18 THE PANEL MEMBER: Yes, sir.

19 MR. DACUS: I saw on your questionnaire, I think,
20 that your nephew has a patent?

21 THE PANEL MEMBER: Yes. Target owns it.

22 MR. DACUS: Okay. He was the inventor?

23 THE PANEL MEMBER: Uh-huh.

24 MR. DACUS: Okay. You understand that these folks
25 here are the claimed inventors and they have a patent.

1 Anything about the fact that your nephew has a patent that
2 would have you leaning in their direction even the slightest
3 bit?

4 THE PANEL MEMBER: No.

5 MR. DACUS: Okay. I'm trying to remember in your
6 questionnaire. Did you say you knew other people with patents
7 also?

8 THE PANEL MEMBER: My dad had one back '60s, '70s,
9 through Texas Instruments, but I have no idea what it was.

10 MR. DACUS: He worked at Texas Instruments?

11 THE PANEL MEMBER: Yes, sir.

12 MR. DACUS: Okay. They've got a lot of patents,
13 don't they?

14 THE PANEL MEMBER: They sure do.

15 MR. DACUS: Anything about that experience --

16 THE PANEL MEMBER: No, sir.

17 MR. DACUS: -- that would have you leaning towards
18 the folks here who claim they have a patent and want money
19 from AT&T and Nokia?

20 THE PANEL MEMBER: No, sir.

21 MR. DACUS: You're going to sit there and listen to
22 the evidence and you're going to render your verdict based on
23 the evidence?

24 THE PANEL MEMBER: Yes, sir.

25 MR. DACUS: All right. Thank you very much.

1 Mr. Wilder? You might just hand that to Mr. Wilder
2 because I had a similar question for him.

3 THE PANEL MEMBER: Yes, sir.

4 MR. DACUS: I think in your questionnaire, you said
5 you worked at Donaldson. Right?

6 THE PANEL MEMBER: Yes.

7 MR. DACUS: Donaldson has patents?

8 THE PANEL MEMBER: Many.

9 MR. DACUS: Many. Did you have some direct
10 involvement in those patents or --

11 THE PANEL MEMBER: No, sir.

12 MR. DACUS: Do you know if they ever asserted or
13 brought lawsuits on those patents?

14 THE PANEL MEMBER: Yes, there has been legal issues
15 over patents. There is over 600 in play today that they
16 advertise, so there's -- yes.

17 MR. DACUS: Okay. Anything about that experience
18 that would have you leaning one way or the other in particular
19 towards the Plaintiff in this lawsuit?

20 THE PANEL MEMBER: No, sir. I fly way too far under
21 the radar.

22 MR. DACUS: Okay. You're just going to sit there
23 and listen to the evidence --

24 THE PANEL MEMBER: Absolutely.

25 MR. DACUS: Okay. Thank you very much, sir.

1 Mrs. Carlisle, I think you may have already answered
2 this, but you said you had a doctor friend who has a patent?

3 THE PANEL MEMBER: Yes. For years they've been
4 creating a device that will help with kidney dialysis.

5 MR. DACUS: Okay. Anything about that experience
6 that would have you leaning towards the Plaintiff Finesse in
7 this case?

8 THE PANEL MEMBER: No.

9 MR. DACUS: I can sleep well and comfortable tonight
10 that if you were on this jury, you're going to just listen to
11 the evidence?

12 THE PANEL MEMBER: Yes. Being a preschool director
13 for years, I've had to combat a lot of little kids arguing
14 their case.

15 MR. DACUS: So you know a little bit about the first
16 person who tells you their story, you better get the second
17 story also.

18 THE PANEL MEMBER: Uh-huh.

19 MR. DACUS: And you agree with that. Right?

20 THE PANEL MEMBER: Yes.

21 MR. DACUS: All right. Thank you very much.

22 THE COURT: Two things, ladies and gentlemen. Try
23 to wait until the question is finished before you give your
24 answer. That way we'll avoid two people talking at the same
25 time and it will keep the record straight.

1 Number two, un verbalized answers, uh-huh, don't translate
2 well into the record in the court. So if it's yes, say yes.
3 If it's no, it's no. But huh-huh and uh-huh is not a good
4 answer.

5 Go ahead, Mr. Dacus.

6 MR. DACUS: Thank you, Your Honor.

7 Let me ask a broad question. How many people on the
8 panel consider yourself to be a leader? And I'll give you a
9 second to think about it. You know, there's leaders, there's
10 followers. There's nothing wrong with either. But how many
11 people consider themselves to be a leader? Would you raise
12 your hand and let me know?

13 So that's 2, 5, 8, 10, 11, 12, 14, 19, and then I'm going
14 to stop there. But thank you-all for raising your hands on
15 the last two rows. All right. Very good.

16 Let me ask you this, Mr. Hawley. You said you consider
17 yourself a leader. I know you're at the ALERT Academy.

18 THE PANEL MEMBER: I have been, yes, sir, for the
19 last while.

20 MR. DACUS: All right. Let me ask you about a
21 little different issue in this case. You remember the patent
22 video from last Friday?

23 THE PANEL MEMBER: Yes, sir.

24 MR. DACUS: Okay. You remember that that patent
25 video said that the ultimate determination on the validity,

1 whether or not a patent's valid, is made by a jury. Do you
2 remember that?

3 THE PANEL MEMBER: Yes, sir.

4 MR. DACUS: Did you know that before you heard that?

5 THE DEFENDANT: I did not, no, sir.

6 MR. DACUS: That's not surprising. A lot of people
7 don't know that. So here's what I want to ask you. If the
8 evidence in this case shows or proves that, in fact, this is
9 not a new concept and the patent should not have been issued,
10 would you be able to render a verdict that says the patent is
11 invalid even though it's been issued?

12 THE PANEL MEMBER: I -- yes. I would do my best to,
13 yeah, make whatever --

14 MR. DACUS: Do you remember from that video that it
15 said that the Patent Office doesn't have or might not have all
16 the information that you're going to be given in this
17 courtroom? Do you remember that?

18 THE PANEL MEMBER: Yes, sir.

19 MR. DACUS: In the course of your -- just your life
20 and your professional life, have you ever made a decision that
21 was wrong, but it was wrong because you didn't have all the
22 information?

23 THE PANEL MEMBER: Absolutely.

24 MR. DACUS: That happens, doesn't it?

25 THE PANEL MEMBER: Yes.

1 MR. DACUS: Okay. Thank you, Mr. Hawley.

2 So here's what I need to know from the panel. I've told
3 you that we believe these two patents are invalid, they should
4 not have been issued. Is there anyone who says, I'm just not
5 sure if I could find that the patent's invalid if the Patent
6 Office issued it? Anybody in that camp, even a slight feeling
7 in that direction?

8 Okay. Good. I don't see any hands.

9 Let me try to speak with some folks I haven't.

10 Mrs. Jarrett, can I speak with you, please? The first
11 and most important thing I need to know, is you know I'm an
12 Aggie.

13 THE PANEL MEMBER: I was at the game.

14 MR. DACUS: You know I'm Aggie. Right?

15 THE PANEL MEMBER: Yes. And my son was also
16 admitted into the biomedical program but turned it down.

17 MR. DACUS: Well --

18 THE PANEL MEMBER: So we're getting a lot of flak
19 about that.

20 MR. DACUS: So how many times do you thing I've
21 said, Go, Tigers, in my life?

22 THE PANEL MEMBER: Well, I'll see you next year.

23 MR. DACUS: Not very many. Is there anything about
24 that that would prevent you from sitting there and listening
25 to the evidence in this case?

1 THE PANEL MEMBER: Oh, absolutely not. Several of
2 my son's best friends go there. I have many, many friends
3 there. It's a healthy, vigorous, and fun relationship.

4 MR. DACUS: It absolutely is.

5 THE PANEL MEMBER: And I was at the game when they
6 beat us when they shouldn't have, so --

7 MR. DACUS: Understood. So no problem for AT&T and
8 Nokia.

9 THE PANEL MEMBER: No.

10 MR. DACUS: All right. Great. Thank you.

11 Let's see. Mr. Miles. I feel like I need to ask you the
12 same thing. LSU-Shreveport. Right, sir?

13 THE PANEL MEMBER: I'm an LSU-Shreveport, but I got
14 three daughters for Texas A&M. So I'm kind of split.

15 MR. DACUS: Congratulations. Are they there now or
16 graduated?

17 THE PANEL MEMBER: No. They are graduated, married,
18 got grandkids now.

19 MR. DACUS: Very good. My daughter, who's my
20 youngest, went there. My son escaped to the north
21 unfortunately for a little while. But thank you, sir.

22 Let's see. Mr. Gunstream, may I speak with you for just
23 a bit, please, sir? Have you ever been on a jury before, sir?

24 THE PANEL MEMBER: No.

25 MR. DACUS: Not even a criminal jury?

1 THE PANEL MEMBER: None at all.

2 MR. DACUS: Okay. Good. I know you had lots and
3 lots of naval military service, but then a PGA professional?

4 THE PANEL MEMBER: Strange transition, isn't it?

5 MR. DACUS: It is.

6 THE PANEL MEMBER: Yeah.

7 MR. DACUS: Do you give golf lessons now?

8 THE PANEL MEMBER: Sure, if somebody wants to pay
9 me.

10 MR. DACUS: All right. Anything about what you've
11 heard so far that would have you leaning either one way or the
12 other in this lawsuit, sir?

13 THE PANEL MEMBER: Not in particular, no.

14 MR. DACUS: You feel like you can just sit and
15 listen to the evidence, render a verdict?

16 THE PANEL MEMBER: I do, yes.

17 MR. DACUS: Okay. Great. Thank you, sir.

18 Let's see. Mrs. Veramontes. And to make you feel
19 better, ma'am, I know you had some reluctance about public
20 speaking. If it makes you feel better, I'm not that great at
21 it, either.

22 I did see on your questionnaire that you said there was a
23 question about do you think a small business doesn't have an
24 equal or a fair chance against a larger corporation. Do you
25 remember that type of question on the questionnaire?

1 THE PANEL MEMBER: Yes.

2 MR. DACUS: And you checked strongly agree. Do you
3 remember that?

4 THE PANEL MEMBER: Yes.

5 MR. DACUS: So you understand why that would cause
6 me some concern because I represent the company that is the
7 larger of the two here?

8 THE PANEL MEMBER: Right.

9 MR. DACUS: Right. My question is, I appreciate you
10 being honest with us on your questionnaire, does that have you
11 leaning in favor of Finesse or the Plaintiff in this case
12 because they're a smaller company?

13 THE PANEL MEMBER: I answered that before I knew
14 what was the situation.

15 MR. DACUS: Understood.

16 THE PANEL MEMBER: So before you hear any facts,
17 yeah, that's -- honestly I lean towards the smaller.

18 MR. DACUS: Not uncommon. Right?

19 THE PANEL MEMBER: Right.

20 MR. DACUS: But now that you're here and the Judge
21 pointed out the statue of justice here that has a blindfold on
22 it -- do you remember him doing that?

23 THE PANEL MEMBER: Yes.

24 MR. DACUS: So you're supposed to make a decision
25 just based on the evidence without looking at who's big or

1 who's small. You understand that?

2 THE PANEL MEMBER: Yes.

3 MR. DACUS: And is that something you would be able
4 to do now that you're at court and not just answering a
5 questionnaire in a vacuum? Is that something you can do?

6 THE PANEL MEMBER: Yes.

7 MR. DACUS: Okay. Great. Thank you very much.

8 Let's see. Mrs. Ehrlish, I think you checked the same
9 box on that questionnaire to say that you strongly agree that
10 a small corporation might not have a fair shake or may have
11 difficulty getting a fair shake against the large corporation.
12 Do you remember that?

13 THE PANEL MEMBER: Yes, I did.

14 MR. DACUS: Okay. Now that you're at the
15 courthouse, do you still feel that way?

16 THE PANEL MEMBER: No.

17 MR. DACUS: Okay. You -- if you're seated on this
18 jury, you'd be able to sit there and make a determination
19 based on the evidence that you hear. Is that right?

20 THE PANEL MEMBER: Yes.

21 MR. DACUS: Okay. Thank you very much.

22 I want to ask a question to the panel as a general
23 matter. There are people in sort of their everyday matters
24 and affairs who, once they're presented with an issue or a
25 problem, make a decision just like that, very quick knee-jerk

1 reaction. There are others who like to take their time, look
2 at both sides of the facts, survey the facts, and then make a
3 decision after some measured time. People fall in two
4 different categories, no right or wrong.

5 Who is it here that considers yourself to be sort of a
6 quick decision-maker, you see the facts, you assess them, and
7 you make a pretty quick decision? Who's in that category?

8 Okay. 2, 4, 11, 12. Anybody else? Okay.

9 The rest of you are in the category of you like to make a
10 more measured decision. You review both sides of the
11 evidence, then make a decision. If you're in that category,
12 raise your hand. Pretty much everybody else. Okay.

13 THE COURT: You have five minutes remaining,
14 counsel.

15 MR. DACUS: Thank you, Your Honor.

16 Juror No. 1 -- and please tell me how to pronounce your
17 name so I don't mispronounce it.

18 THE PANEL MEMBER: Troquille.

19 MR. DACUS: Mrs. Troquille. So you are in that
20 category of you like to make more measured decisions?

21 THE PANEL MEMBER: Correct.

22 MR. DACUS: Perfect. Have you heard anything in the
23 course of this morning that would have you leaning either way
24 towards either party?

25 THE PANEL MEMBER: No.

1 MR. DACUS: Thank you very much. Here's what I'm
2 going to do. I'm going to give the Court back a few more
3 minutes of its time, which I'm glad to do. I'm very
4 appreciative of everyone's participation and responses this
5 morning.

6 There is one thing that I want to do before I sit down.
7 I've done this long enough that I know I do not always ask the
8 right questions, and sometimes there are people sitting in
9 your spot and they're thinking, You know what? That lawyer
10 just -- he didn't ask me this, but, man, he probably wanted to
11 know it even though he didn't ask it, and I'm probably not the
12 right person for him on this jury.

13 Is there anyone that has that thought that you think I
14 didn't ask you something that I probably wanted to know?
15 Anybody in that camp? Okay. Good.

16 That's all I have for you this morning. For the eight of
17 you that are selected on this jury, I very much look forward
18 to presenting the evidence to you.

19 And I thank you for the time, Your Honor.

20 THE COURT: All right. Counsel, approach the bench,
21 please.

22 (The following was had outside the hearing of the
23 jury panel.)

24 THE COURT: Let me ask this question of all of you
25 before we go any further. Does everybody agree that Ms.

1 Ehrlish should not serve? She's an AT&T stockholder. Anybody
2 disagree with that?

3 MR. DACUS: No.

4 THE COURT: She's excused.

5 Now, having done that, Mr. Ward, does the Plaintiff have
6 any challenges for cause?

7 MR. WARD: Yes, Your Honor. Juror No. 11 indicated
8 livelihood. One of the customers is AT&T, he knew Mr. Dacus,
9 didn't feel like he could set those things aside and decide
10 this case based on the evidence.

11 THE COURT: All right. Anybody besides No. 11?

12 MR. WARD: Yes, Your Honor. Juror No. 12 could
13 never consider an award of hundreds of millions of dollars
14 regardless --

15 THE COURT: Just identify them. We'll talk about
16 the reasons later.

17 MR. WARD: I'm sorry. Juror No. 2.

18 THE COURT: Mr. Gunstream?

19 MR. WARD: Yes, sir.

20 THE COURT: So 2, 11, 12. Anybody else for cause?

21 MR. WARD: No. 9 is excused?

22 THE COURT: Excused because they are a stockholder.

23 Mr. Dacus, does Defendant and Intervenor have any
24 challenge for cause?

25 MR. DACUS: Yes. Juror No. 8, Your Honor.

1 THE COURT: Okay.

2 MR. DACUS: That's the only one.

3 THE COURT: Okay. All right. No. 11 and No. 20
4 indicated that they had scheduling issues, as did No. 25.
5 Obviously No. 11 we need to talk about because she's -- he's
6 been challenged for cause by the Plaintiff. I think I ought
7 to bring up No. 20 as well.

8 Does anybody think we could get as far as 25? I don't
9 think I need to bring up No. 25.

10 MR. WARD: I don't think so.

11 THE COURT: Okay. So in addition to those
12 challenges for cause, which would be 2, 8, 11, and 12, I'll
13 ask No. 20 to be available to speak with me here at the bench.

14 Does anybody see anybody else within the potential strike
15 range that needs to be talked to here at the bench?

16 MR. WARD: Not from Plaintiff.

17 MR. DACUS: Not for the Defendants.

18 THE COURT: All right. If you'll return to your
19 seats, please.

20 (The following was had in the presence and hearing
21 of the jury panel.)

22 THE COURT: Ladies and gentlemen of the panel, I am
23 going to need to talk with just a few of you at the bench.
24 Everybody else, I'm going to let you have a recess while
25 that's going on.

1 For those of you that I don't ask to stay behind and talk
2 with me here one at a time at the bench, for those of you that
3 is -- who will have a recess, I'm going to ask you to exit
4 through the double doors in the back of the courtroom.
5 While you're on recess, a couple of things you might want to
6 know.

7 Number one, when you go out those double doors, if you
8 turn left and go around the corner you will find two important
9 things--the water fountain and the restrooms.

10 Number two, please don't leave the building or go to any
11 other floor. Stay on this floor and stay in this building
12 during the recess.

13 Number three, you're welcome to talk with anybody else on
14 the panel during the recess, whether it's about colleges or
15 whether it's about children or whether it's about
16 grandchildren or the weather or anything else. Do not discuss
17 what's happened in the courtroom this morning.

18 Let me tell you this: You have heard zero evidence in
19 this case. Nothing that's been said in this courtroom this
20 morning is evidence in this case. So talk about what you do,
21 talk about what you have as hobbies, talk about anything you'd
22 like to with anybody else on the panel during the recess, but
23 don't discuss anything that's happened in the courtroom this
24 morning.

25 Now, those of you I'd like to stay behind so I can talk

1 to you here at the bench one at a time are as follows:
2 Mr. Gunstream No. 2; Mr. Grissom, No. 8; Mr. Alexander, No.
3 11; Mr. Morey, No. 12; and Mrs. Carlisle, No. 20. Those of
4 you that I just called out your names, I'm going ask you to
5 stay behind.

6 If someone needs to get around you to exit the courtroom,
7 please just stay in your seats, let them move around you as
8 they exit the courtroom, and then I'll bring you up here one
9 at a time to talk with you.

10 Except for the people that I called out specifically that
11 I've asked to stay behind, the rest of the panel is excused
12 under those instructions for recess at this time.

13 Mrs. Jarrett, if you want to lead us, please exit through
14 the double doors.

15 (Whereupon, the jury panel left the courtroom.)

16 THE COURT: Be seated, please.

17 Counsel, approach the bench.

18 And, Mr. Gunstream, would you come up and join us,
19 please?

20 Good morning, sir.

21 THE PANEL MEMBER: Good morning.

22 THE COURT: This is our microphone. If we can just
23 talk quietly here together.

24 THE PANEL MEMBER: Yes, sir.

25 THE COURT: You said during the questioning this

1 morning that damages are always too high. You also said that
2 damages -- as I heard you, that damages, no matter what they
3 are, always impact me down the line.

4 Do you believe you can listen to the evidence in this
5 case about damages if you're selected as a juror and make any
6 decision in that regard solely on the evidence that's
7 presented and nothing else, or do you believe that these
8 opinions that you, like everybody else in the world, brought
9 with you this morning would keep you from being able to make
10 your decision based solely on the evidence?

11 THE PANEL MEMBER: To be honest with you, I think
12 that the -- I would have a hard time reaching that number for
13 anybody.

14 THE COURT: For anybody under any circumstances?

15 THE PANEL MEMBER: It doesn't matter. It's just too
16 much money.

17 THE COURT: All right. I appreciate your candor.
18 It's a whole lot better for us to find it out now than later.

19 Mr. Ward, do you have any questions for Mr. Gunstream?

20 MR. WARD: I do not, Your Honor.

21 THE COURT: Mr. Dacus?

22 MR. DACUS: I do not.

23 THE COURT: Mr. Gunstream, I'm going to let you join
24 the rest of the panel outside the courtroom for recess. Just
25 don't discuss what we talked about in here.

1 THE PANEL MEMBER: You bet.

2 THE COURT: Thank you, sir.

3 (The panel member left the courtroom.)

4 THE COURT: I'm going to excuse Mr. Gunstream for
5 cause.

6 Mr. Grissom, would you come up, please?

7 Good morning.

8 THE PANEL MEMBER: Good morning, sir.

9 THE COURT: This is the microphone. If we can
10 quietly talk to it while you are here.

11 There was a lot of discussion on both sides this morning
12 about leaning one way and leaning the other way.

13 THE PANEL MEMBER: Yes, sir.

14 THE COURT: And you indicated that you tend to lean
15 toward the underdog.

16 THE PANEL MEMBER: Yes, sir.

17 THE COURT: And I think when asked further about it,
18 you said something like, And you ought to be concerned about
19 that.

20 So what I need to know is how much leaning is there in
21 your case and can you set that aside and make the
22 evidence--excuse me--make the decisions that this jury is
23 going to be called upon to make based on just the evidence
24 that's presented during the trial?

25 THE PANEL MEMBER: Yes, sir.

1 THE COURT: Because the jury that's selected in this
2 case is going to hear me say more times than they care to
3 recall that they must base their decisions solely and only on
4 the evidence and nothing else.

5 And everybody comes to the courtroom with their own
6 preconceived notions and opinions and biases. We're all
7 human. We all have that. What I need to know is, can you
8 leave those outside the courtroom and base your decision
9 solely on the evidence, or are they such that you can't do
10 that?

11 THE PANEL MEMBER: Yes, sir.

12 THE COURT: Can you answer that for me?

13 THE PANEL MEMBER: After the questions and after I
14 answered, I was sitting over there still mulling on what I
15 said and if I can put those aside. And I want to. The
16 Christian man inside of me tells me to put some of those
17 opinions beside me, but I can't find it in my spirit to -- I
18 don't know why I have an admiration to the little dog from the
19 get-go.

20 I would hope that I could put those opinions aside, but
21 truly, Your Honor, I was asking myself if I could, and I don't
22 know if I can.

23 THE COURT: So you're not sure.

24 THE PANEL MEMBER: I'm not sure.

25 THE COURT: Okay. Mr. Dacus, do you have questions?

1 MR. DACUS: Nothing further, Your Honor.

2 THE COURT: Mr. Ward?

3 MR. WARD: Nothing.

4 THE COURT: Okay. Mr. Grissom, I'm going to let you
5 join the rest of the panel outside for recess. Just don't
6 discuss anything we talked about in here.

7 THE PANEL MEMBER: Yes, sir.

8 THE COURT: Thank you.

9 THE PANEL MEMBER: Yes, sir.

10 (The panel member left the courtroom.)

11 THE COURT: I'm going to excuse Mr. Grissom. He
12 can't affirmatively represent that his prior biases won't
13 impact his decision-making.

14 Mr. Alexander, would you come up, please?

15 Good morning, sir.

16 THE PANEL MEMBER: Good morning.

17 THE COURT: This is the microphone. If we can just
18 talk quietly here at the bench.

19 You've known Deron Dacus since the first grade?

20 THE PANEL MEMBER: Yes, sir. Actually kindergarten.

21 MR. DACUS: First grade.

22 THE COURT: All right. Did you play together
23 growing up? Were you friends growing up?

24 THE PANEL MEMBER: Absolutely. Our moms taught
25 school together. We took vacations together, all kinds of

1 stuff.

2 THE COURT: I had a mother who was a second grade
3 schoolteacher, and I know about the other teachers' friends
4 and how I related to them.

5 Can you tell me that you can completely set that aside
6 and it won't impact any decisions you make in this case if
7 you're selected to serve?

8 THE PANEL MEMBER: Being honest, no, sir, I can't.
9 There's always --

10 THE COURT: I wouldn't expect you to.

11 THE PANEL MEMBER: You weigh one side or the other,
12 so, yeah.

13 THE COURT: Okay. Any questions, Mr. Ward?

14 MR. WARD: No, Your Honor.

15 THE COURT: Mr. Dacus?

16 MR. DACUS: No, Your Honor.

17 THE COURT: Mr. Alexander, I'm going to let you join
18 the panel outside for recess. Just don't talk about what we
19 have discussed here.

20 THE PANEL MEMBER: Yes, sir.

21 (The panel member left the courtroom.)

22 THE COURT: I'm going to excuse Mr. Alexander.
23 Mr. Morey, please come up.

24 Good morning, sir.

25 THE PANEL MEMBER: Good morning.

1 THE COURT: This is the microphone. If you and I
2 can just talk quiet here.

3 During the questioning this morning, the issue of damages
4 came up. Mr. Ward told the panel that the Plaintiff in this
5 case was going to ask them to return a verdict in or near the
6 figure of \$166 million, and my recollection and my notes from
7 the questioning that followed indicated that you said you
8 could never award that amount of money no matter what the
9 facts were. Is that right?

10 THE PANEL MEMBER: Correct.

11 THE COURT: Okay. So no matter what the evidence
12 is, you couldn't award that amount of money?

13 THE PANEL MEMBER: No, not for something that didn't
14 cause some physical damage to someone.

15 THE COURT: Okay. So maybe if a high-rise building
16 collapsed or something blew up and killed 50 people, and there
17 was blood on the street, but not in a patent case.

18 THE PANEL MEMBER: Correct. Because all it's going
19 to do is if they were going to give \$160 million in its favor,
20 AT&T is going to turn right around and raise the rates for
21 everything else. They're not going to lose anything.

22 THE COURT: Okay.

23 All right. Mr. Ward, do you have any questions of
24 Mr. Morey?

25 MR. WARD: I don't have any questions.

1 THE COURT: Mr. Dacus?

2 MR. DACUS: No, sir.

3 THE COURT: I'm going to let you join the rest of
4 the panel outside during the recess. Just don't talk about
5 anything we discussed in here.

6 THE PANEL MEMBER: Yes, sir.

7 THE COURT: Thank you very much.

8 (The panel member left the courtroom.)

9 THE COURT: I'm going excuse Mr. Morey for cause.
10 Mrs. Carlisle, would you come up, please?
11 Good morning.

12 THE PANEL MEMBER: Good morning.

13 THE COURT: This is the microphone. If you and I
14 can just talk quietly here.

15 THE PANEL MEMBER: Okay.

16 THE COURT: At the beginning of the process I talked
17 about my belief that it will take the entirety of this week to
18 try this case to completion. And when I asked about people
19 that would be seriously impacted about being here each day if
20 they were selected, you raised your hand. Can you tell me
21 about that?

22 THE PANEL MEMBER: I've got bile duct cancer, and I
23 have a chemotherapy treatment on Thursday, and I'm seeing my
24 oncologist on Monday. I can reschedule those things, I've
25 already called, if I need to.

1 THE COURT: Okay. That's what I was going to ask
2 you. Is this something that has to be done this week or
3 something you could reschedule?

4 THE PANEL MEMBER: My cancer is incurable so it
5 doesn't really matter.

6 THE COURT: Okay. Do you have these chemo
7 treatments every week or --

8 THE PANEL MEMBER: No.

9 THE COURT: -- just periodic?

10 THE PANEL MEMBER: Uh-huh.

11 THE COURT: Okay. And you're not telling me that if
12 you had to reschedule it for the next week, it could have any
13 medical impact on you, that you know of?

14 THE PANEL MEMBER: No.

15 THE COURT: Okay. I know that's inconvenient and I
16 appreciate you being candid with me. Is there anything else
17 about your situation that would make it difficult for you to
18 serve as a juror that we haven't talked about?

19 THE PANEL MEMBER: Can I bring a blanket? It's so
20 cold in here. I was freezing.

21 THE COURT: You wouldn't believe the number of times
22 I hear that. I hate to tell you, but there's not anything I
23 can do about that.

24 THE PANEL MEMBER: That's fine.

25 THE COURT: You can certainly wear warm clothes if

1 you are selected.

2 THE PANEL MEMBER: Thank you.

3 THE COURT: Mr. Ward, do you have any questions for
4 Ms. Carlisle?

5 MR. WARD: I do.

6 And I'm sorry that you're going through that. I just
7 want to know, do you feel like you can sit and listen to the
8 evidence and base a decision in this case based upon the
9 evidence, or do you feel like what you're going through might
10 impact your ability to sit and listen for long days?

11 THE PANEL MEMBER: No. I may get tired, you know,
12 but --

13 MR. WARD: We take breaks.

14 THE PANEL MEMBER: -- while we're sitting, we're
15 good.

16 MR. WARD: Okay. I don't have any other questions.

17 THE COURT: Mr. Dacus, any questions?

18 MR. DACUS: No, sir. Thank you.

19 THE COURT: Mrs. Carlisle, my mother taught second
20 grade for 38 years, and if you can manage a preschool, you've
21 got a lot of stamina.

22 THE PANEL MEMBER: Thank you.

23 THE COURT: I'm going to let you join the rest of
24 the group outside for recess. Just don't discuss what we've
25 talked about in here.

1 THE PANEL MEMBER: Sure. Thank you, sir.

2 THE COURT: Thank you, ma'am.

3 (The panel member left the courtroom.)

4 THE COURT: I'm not going to excuse Mrs. Carlisle.

5 That means I've excused five members of the panel. We're
6 going to seat eight. Each side has four peremptory
7 challenges, so 8 and 8 is 16 and 5 is 21.

8 Do we all agree that the parties will strike through No.
9 21?

10 MR. DACUS: Yes, sir.

11 MR. WARD: Yes, sir.

12 THE COURT: All right. I've got about eight or nine
13 minutes until 11:00. Why don't I give you until 10 minutes
14 after 11:00. That will give you almost 20 minutes. Will that
15 be adequate?

16 MR. DACUS: Yes, Your Honor.

17 MR. WARD: Yes, Your Honor.

18 THE COURT: You may be excused to strike your list.

19 While counsel exercise their peremptory challenges, the
20 Court will stand in recess.

21 (Brief recess.)

22 THE COURT: Be seated, please.

23 All right. Ladies and gentlemen, if you'll listen
24 carefully, as your name is called by our Courtroom Deputy
25 Ms. Brunson, at that time if you'll come forward and take your

1 place in the jury box.

2 Let me tell you how I'd like to do this. We're going to
3 seat eight jurors in this case. I'd like the first four to
4 position themselves on the front row or the first row of the
5 jury box, the second four jurors 5, 6, 7, and 8 on the back
6 row of the jury box.

7 When the first person is called and as you come forward,
8 I'd like you to enter the front row of the jury box and walk
9 all the way to the end and stand in front of the last chair.
10 When the second person is called, I'd like you to enter the
11 jury box on the front row and walk toward the first person but
12 stand in front of the third chair. Leave a vacant chair
13 between you. The third person will leave a vacant chair
14 between No. 2 and themselves, and the fourth person will leave
15 a vacant chair between No. 3 and themselves.

16 And then the second four of you, the second half of you
17 will do the same thing on the second row, and that way we'll
18 have four on the first row, four on the back row, and
19 everybody will have a vacant chair between them and the next
20 juror. And if all eight of you will remain standing and in
21 place until all of you are in the jury box and I've given you
22 further instructions, I'd appreciate it.

23 So with that, I'm going to ask Ms. Brunson to call the
24 names of our eight selected jurors for this case.

25 THE CLERK: Rachael Troquille, Judy Ragsdale, Anna

1 Henderson, Betty Reese, Bettina Viramontes, Tommy Miles, Jr.,
2 Kristine Davis, Stacey Dale.

3 THE COURT: Thank you, ladies and gentlemen. I'm
4 going to ask our Courtroom Deputy to administer the oath to
5 you at this time. If you'd each raise your right hands,
6 please.

7 (Whereupon, the oath was administered by the Clerk.)

8 THE COURT: Please have a seat.

9 For those of you on the venire panel who were not
10 selected to serve on this case, I'm about to excuse you in
11 just a couple of minutes. But as I excuse you, ladies and
12 gentlemen, I want to thank you on behalf of the Court, the
13 Court staff, the parties in this case, the counsel in this
14 case, everyone on this side of the bar.

15 We all recognize that each of you had other places to be
16 today, other things going on in your lives, and you set those
17 aside and you made the sacrifice to appear and present
18 yourself for jury duty. In this particular case you've done
19 that twice. You did it on Friday and you did it again this
20 morning on Monday. And I want you to know all of us
21 appreciate what you've done, we recognize the sacrifice that
22 you've made, and I want you to understand you have rendered
23 very real and important public service by being here.

24 I could not select this jury without all of you here. We
25 could not try this case without this jury. The dispute

1 between these parties could not be brought to a peaceful
2 resolution without this trial. So all of you have done very
3 real and important public service by being here, and I want
4 you to know we recognize that, we appreciate it, and we
5 applaud it.

6 As you leave the courtroom in a few minutes, if you will
7 exit to your right toward the front of the building, you will
8 pass the Clerk's Office. Will you please leave those very
9 valuable plastic numbers pinned to your chest with the Clerk.
10 Those are not souvenirs and, believe it or not, we will use
11 them again with another panel. So please don't take those
12 home with you.

13 If you need a written record of where you've been this
14 morning for an employer, if you have any questions about
15 anything related to you being present for jury duty, either
16 Friday or today, please pose those questions to Ms. Clendenning
17 and the Clerk's Office and they will be more than happy to
18 help you.

19 Again, ladies and gentlemen, thank you so much for your
20 presence and your service.

21 Those not selected to serve on this jury are now excused.

22 (Whereupon, the jury panel left the courtroom.)

23 THE COURT: Please be seated.

24 Ladies and gentlemen of the jury, and I'm glad we've got
25 one man so I can say 'ladies and gentlemen of the jury',

1 because I would probably say it even if it was all women.
2 I've had that before and I just say it the way I've always
3 said it. So, ladies and gentleman of the jury, we appreciate
4 you being here. I look forward to trying this case with you.
5 Let me give you some very early instructions, and then I'm
6 going to excuse you for lunch.

7 The first thing I need to tell you is that during this
8 trial the Clerk's Office is going to provide you lunch each
9 day in the jury room. You do not need bring a lunch. You do
10 not need to worry about going out into this community and
11 finding a place to eat and getting back.

12 Bringing you or having the Clerk's Office provide you
13 with lunch does two very important things. Number one, it
14 makes it such that we do not have to take as long a break for
15 lunch as we would if you had to leave the building and go out
16 into the community.

17 Number two, I don't have to worry about somebody losing
18 track of the time and not getting back here so we can't get
19 back on the record and continue the trial. So for those
20 reasons, and there may be others, but at least for those
21 reasons I've instructed the Clerk's Office to provide you with
22 lunch each day in the jury room.

23 I know Ms. Clendening alternates around the various
24 vendors in the Marshall community. If you've got any kind of
25 a food allergy, take it up with Ms. Clendening. But you do

1 not need to worry about bringing food for lunch during the
2 trial.

3 Second of all, let me give you a very rough idea about
4 the kind of schedule we're going to keep through this trial
5 process. Every judge in the United States that tries cases
6 like this has the latitude to try them the way they think is
7 best, and so there's a great diversity in the scheduling and
8 the timing and how trials are tried. There are fellow judges
9 in this district who are my colleagues who I think the world
10 of, and they will take twice as long to try this case as I
11 would, but the reason is they'll start at 10:00 in the morning
12 and they'll quit at 4:00 p.m. and they'll take an hour and a
13 half for lunch.

14 And I've been told over my 11-plus years now on the bench
15 that jurors in East Texas would much rather start early and go
16 longer and be away from their homes and their families and
17 their work a shorter number of total days than if we started
18 late and quit early and it took twice as many days to try the
19 case. I know several of you have got distances to drive from
20 where you live coming and going each day, so the fewer number
21 of times you have to do that I think the better off everybody
22 will be.

23 So my practice is to start early, so I'm going to let you
24 know that my intention is to start every day at 8:30. I'd
25 like to have you assembled in the jury room by about 7:15

1 [sic], and if I'm not mistaken Ms. Clendening will have juice
2 and coffee and pastries and snacks for breakfast each morning
3 as well.

4 But if you can plan your schedules and let those know
5 that you live with and work with that you will be here -- need
6 to be here by 8:15 so we can start as close to 8:30 as
7 possible, that would be good. Again, lunch will be provided
8 for you, so you won't be leaving the courthouse to go find
9 lunch or have to bring it in.

10 Third, I won't stop for the day at 4:00, I probably won't
11 stop for the day at 5:00, and in most cases we'll probably go
12 to somewhere in the neighborhood of 6:00. That is not an
13 exact science. Some of these witnesses are going to be on the
14 witness stand for only a few minutes. Some of these witnesses
15 are going to be on the witness stand for several hours.

16 It's my preference and I think it gives us a better trial
17 for you to follow the evidence if I try to get the witness on
18 and off the same day. I hate to have to break a witness and
19 get halfway through their testimony and send everybody home
20 and then pick back up the next morning. I think you will
21 follow their evidence and their testimony better if you can
22 get the full presentation from both in the same day.

23 So that means if we have a long witness who to finish
24 their testimony we've got to go to 6:15, I'm probably going to
25 be inclined to go to 6:15 and get them finished. If we have a

1 witness that's going to stop at 5:45 and the next witness is
2 going to be an hour and a half, we're not going to start that
3 next witness.

4 So it won't be 6:00 on the dot, but you can bet on the
5 fact, you can count on the fact, it's not going to be 4:00 or
6 5:00 in the afternoon. But if we will start at 8:30, if we
7 will take regular breaks but keep them reasonable in duration,
8 and if we'll go to 5:30 or 6:00, or somewhere in that range
9 each day, we can finish this case and you can complete your
10 jury service, in my best estimate, by the end of this week.

11 As I say, I have seven other colleagues in this district.
12 There are eight active district judges in the Eastern District
13 of Texas, everywhere from Beaumont to Lufkin to Marshall to
14 Texarkana, to Tyler, to Sherman, and to Plano, and they all do
15 it differently. And I have some that I truly admire and
16 appreciate, but it would take them two weeks to try this case
17 because they will do it the way they think it needs to be done
18 and it won't be the kind of schedule that I like to use.

19 So I want you to know that. I want you to be able to
20 tell those that you live with or those that you need to
21 coordinate with, those that may be depending on you, I will
22 need you to be able to let them know what to expect in a
23 general sense as far as schedule goes. But I have routinely
24 been told by jurors after cases are over, We'd much rather
25 work a long day every day but be away from our homes and our

1 work half as many days as it would if we did it another way.
2 So that's the approach I'm going to take.

3 I know this time of the year by 6:00 it's probably going
4 to be dark outside and you're going to need to plan your
5 schedule to come and go, your travel to be here under those
6 circumstances. Please check the weather each night, too. You
7 know, they always say in Texas, If you don't like the weather,
8 wait five minutes and it will change. I've had jurors not
9 check the weather and it took them an extra half an hour to
10 get here than they planned on.

11 And a jury trial is like a convoy of ships--we can move
12 only as fast as our slowest ship. So if seven of you are here
13 and ready to go at 8:30 and one of you is not, we can't start
14 with seven; we have to have all eight of you here. So please
15 keep that in mind, ladies and gentleman. And I know that you
16 will.

17 Also while you are on this lunch break we're going to
18 start in a few minutes, I'd like you to take an opportunity to
19 make sure Ms. Clendening has a good cell phone number for each
20 of you. It is possible, not very likely, but it is possible
21 something could occur that would necessitate us getting in
22 touch with you overnight or before you're back here the next
23 day. I don't think that's likely, but I'd like to be prepared
24 for all circumstances.

25 I was a Boy Scout. I think 'be prepared' is a pretty

1 good motto. So we're going to try to be prepared, so please
2 let Ms. Clendening have a good working cell phone number for
3 you that would be able to reach you overnight when you're not
4 here at the courthouse.

5 Speaking of cell phones, I'm also going to ask you not to
6 bring your cell phones into the courthouse starting tomorrow.
7 If you've got them with you today, leave them in the jury room
8 when you come back from lunch. Cell phones in today's world
9 are just small computers, and one of the things you're going
10 to hear from me more times than you probably want to hear it
11 over the course of this trial is that you're not to
12 communicate with each other or anyone else about this case.

13 And that goes back to a very fundamental principle that
14 at the end of this trial when you will be asked to answer
15 certain questions that will be presented to you in writing,
16 you must have only the sworn testimony presented in this
17 courtroom and those documents that the Court has admitted into
18 evidence as exhibits as the sole universe of the information
19 that you draw upon to answer those questions.

20 And if you have a cell phone with you and something's not
21 completely familiar, you, like many of us, might be tempted to
22 pick it up and Google this or do a search on that, and any
23 outside information runs counter to that underlying
24 fundamental principle that only the sworn testimony of the
25 witnesses subject to cross examination and only the exhibits

1 admitted into evidence by the Court constitute the proper and
2 appropriate and correct evidence for you to base your
3 decisions on as you answer those questions.

4 So understanding that you might be tempted to use those
5 cell phones for something else, I'm going to ask that you
6 leave them at home or leave them in your car when you come
7 back tomorrow. If you have them with you, leave them in the
8 jury room when you come back in after lunch.

9 If you're expecting an important text message or email or
10 phone call related to work, there will be a time when you can
11 step to your vehicle and check your cell phone if necessary,
12 but please don't bring them back into the building starting
13 tomorrow.

14 And we will take breaks during the trial. I usually take
15 two breaks in the morning and try to take two breaks in the
16 afternoon. That's not a hard-and-fast rule. It may be three
17 one day. But we will take periodic breaks. I get tired of
18 sitting and I like to stand up and move around a little bit,
19 too. So don't think you're going to be glued to those chairs
20 from 8:30 in the morning until 6:00 clock at night.

21 Also, ladies and gentlemen, let me give you a few other
22 instructions that I think are very important, and I'll start
23 with the one I just mentioned. Don't discuss this case with
24 anyone. And when I say don't discuss it, I mean don't
25 communicate in the broadest sense of the term with anyone

1 about this case.

2 And as I just mentioned, trials by jury in a United
3 States District Court such as this are based on the
4 fundamental principle that the jury should have and must rely
5 on only--the evidence presented in the courtroom during the
6 trial when they answer the questions that they'll be asked to
7 answer after the evidence is complete. Those questions will
8 come to you in a written document. That document is called
9 the verdict form. Your answers to those questions must be
10 unanimous, they must be in writing, and they must draw on only
11 the evidence presented during this trial from this courtroom
12 as the source of information from which to answer those
13 questions.

14 So don't communicate with anyone in any way about
15 anything related to this trial, because if you do, you'll
16 violate that fundamental principle, and if you do that, you
17 will put at risk the entirety of the trial and all the
18 hundreds, if not thousands, of hours of work that have gone
19 into it. So that's why you're probably going to hear this
20 from me over and over and over during the trial--don't
21 communicate with anyone in any way about the case.

22 And when I say don't communicate with anyone about the
23 case, that means the eight of you, too. We take a recess
24 during the day, don't go back in the jury room and talk about
25 what you thought of that last witness that was on the witness

1 stand, whether you believed them, whether you thought they
2 were credible. That's not proper, either. Don't discuss the
3 case with anyone, including the eight of yourselves, until
4 you've heard all the evidence and until I have instructed you
5 to deliberate on your verdict.

6 Now, after all the evidence, after you received my
7 instructions on the law that you are to apply, after you've
8 heard the closing arguments from the attorneys in the case, at
9 that point I will tell you, "Ladies and gentlemen, you may now
10 retire to the jury room to deliberate on your verdict."
11 There's something magic about those words, because when I say
12 those words, you go from being prohibited from talking to each
13 other about the case to being required to talk to each other
14 about the case. When you retire to deliberate, you must
15 discuss the evidence, the witnesses, everything about the
16 trial with each other in an effort to reach a unanimous
17 agreement as to how to answer those written questions that
18 will be in the verdict form.

19 It's often thought of as being like a light switch.
20 Before I tell you to retire and deliberate on your verdict
21 after all the evidence has been presented, you must not
22 discuss the case with each other or anyone else. When I tell
23 you to retire and deliberate on your verdict, the light switch
24 changes, it goes on from off and you must discuss in your
25 deliberations the case and the evidence and the trial with

1 each other in an effort to reach a unanimous decision on those
2 questions. I hope that's clear to you.

3 But because a violation of that puts at risk the entirety
4 of the process, you're probably going to hear me say over and
5 over again, probably pretty much every time you get out of
6 those chairs you're going to hear me say, "Please follow all
7 my instructions, including not to discuss the case with anyone
8 in any way." So I'm just giving you fair warning, you're
9 probably going to be tired of hearing that by the time the
10 trial is over, but it's so fundamentally important I have a
11 tendency to repeat it often. So I'm giving you fair warning.

12 And when I say don't communicate about the case in any
13 way, again, that's the broadest sense of the term. That not
14 only means don't have a conversation with somebody, that also
15 means don't communicate in any other way. Don't send an email
16 to somebody. Don't send a text message to somebody. Those of
17 you that use social media, for heaven's sake don't post
18 something on Facebook or tweet on Twitter or use any social
19 media platform. All of that is communication. So in the
20 broadest sense of the term you must not communicate with
21 anyone, including the eight of yourselves, about the case
22 until I tell you to retire and to deliberate on your verdict.

23 And I'll tell you this, ladies and gentlemen. Unless you
24 live alone, when you get home tonight, wherever that is, and
25 you walk in the door, the first thing you're going to hear is,

1 Well, what happened in federal court in Marshall today? Don't
2 even try to answer that question, because if you even try to
3 answer that question, you're going to almost assuredly violate
4 this instruction. Just blame it on me. That's part of why I
5 get paid. Just say, That very stern federal judge told me not
6 to talk about this with you until the case was over and I had
7 been released. Now, when that happens I can talk to you, but
8 until the case is over, he has told me not to discuss anything
9 about the case and, therefore, I'm not even going to try to
10 answer that question. Blame it on me and that's just part of
11 what I get paid for.

12 Also, ladies and gentlemen, in this same vein, don't do
13 any outside research of any kind. You're going to hear about
14 new things and new concepts and new sets of facts that you
15 probably haven't heard of before during this trial. Don't be
16 tempted to do any outside research, whether it's an
17 encyclopedia off the shelf or an online internet search or
18 anything else. Don't attempt to do any outside research in
19 any way.

20 Now, one other thing you've heard these lawyers say
21 during jury selection this morning is that this is an
22 important case. It is an important case, and there are no
23 unimportant cases that get to a trial before a jury in a
24 United States District Court. That means -- although it's
25 very unlikely, that means it is within the realm of

1 possibility that during this trial some third party could
2 attempt to contact you and could attempt to influence your
3 decisions in this case. I don't think that's likely, but I
4 will tell you it is possible.

5 If at anywhere in the process you are contacted by anyone
6 or there's any communication to you from anyone that you feel
7 awkward about or uneasy about or you're not sure it's what it
8 ought to be in any way, immediately you should let Ms.
9 Clendening know, Ms. Clendening will advise me and, if
10 necessary, the Court will deal with it. But, again, it's not
11 likely, but this is not an unimportant case and it is within
12 the realm of possibility, so I want to let you know about
13 that.

14 Also, ladies and gentlemen, over the course of this trial
15 as you come in in the mornings, as you leave in the evenings,
16 and at other times it's quite possible that you're going to
17 pass by either on the front steps, in the hallway, somewhere,
18 one or more of the lawyers in this case, one or more of the
19 representatives of the parties in this case, one or more of
20 the support staff in this case. And when that happens,
21 they're not going to talk to you.

22 So if you come in the front steps tomorrow morning and
23 one of these lawyers is passing you in the opposite direction
24 and you say, good morning, they're going to walk right by you
25 and they're not going to say good morning back to you. And

1 when that happens, don't think they're being rude, don't hold
2 it against them, don't think they're being unfriendly; those
3 are my instructions to them.

4 Again, there must be no communications of any kind that
5 could influence your decisions in this case except the sworn
6 testimony from the witness stand during the trial and subject
7 to cross examination and the documents and tangible things
8 that the Court under the rules of evidence has admitted into
9 evidence as exhibits in this trial. That's it. That's the
10 entirety of the universe of proper information for you to know
11 about and to consider in this trial.

12 So if somebody affiliated with this case one way or the
13 other doesn't speak, doesn't have a conversation, isn't
14 gregarious and friendly as we are used to here in East Texas,
15 it's because I've instructed them not to. And don't hold it
16 against them and don't think they're being rude or unfriendly;
17 understand that they're complying with my instructions and my
18 rules.

19 Briefly let me give you one more instruction. Then I'm
20 going to release you for lunch. I want to give you a
21 structural overview of how the trial will take place.

22 After lunch and when you come back in, I will have some
23 preliminary instructions to give you, which I'll give to you
24 orally.

25 After I've given you my preliminary instructions, then

1 the lawyers for both sides will present their opening
2 statements. Opening statements are not arguments. Opening
3 statements should be a roadmap where each side tells you what
4 they expect they will be able to show and prove to you by way
5 of the witnesses and the evidence that they're going to
6 present at the trial. It's an overview, a roadmap, if you
7 will, from both the Plaintiff's side and the Defendant and
8 Intervenor's side.

9 Once they've given you those opening statements from both
10 sides, the Plaintiff will go first, and then the Defendant and
11 Intervenor will go second, then the Plaintiff will put on its
12 evidence and will call its first witness. That's called the
13 Plaintiff's case in chief. And they will call their
14 witnesses, they will examine their witnesses, the other side
15 will then get a chance to cross examine their witnesses. And
16 then we'll move on to the next witness, and we'll go through
17 each of the Plaintiff's witnesses until they've presented all
18 their evidence. And when that's completed, the Plaintiff will
19 rest its case in chief.

20 When the Plaintiff rests its case in chief, then we will
21 turn to the Defendant and Intervenor, AT&T and Nokia, and
22 through their counsel they will call their witnesses, and they
23 will examine their witnesses and the Plaintiff's counsel will
24 get a chance to cross examine their witnesses. And we will go
25 through each of the AT&T and Nokia witnesses until they have

1 presented all their witnesses and all their evidence. At that
2 point AT&T and Nokia will rest the Defendant and Intervenor's
3 case in chief.

4 Once they have rested their case in chief, then the
5 Plaintiff Finesse has an opportunity, if they choose to, to
6 call to the witness stand what are known as rebuttal
7 witnesses, to rebut any of the testimony put on by Defendant
8 and Intervenor. They may call rebuttal witnesses, they may
9 not call rebuttal witnesses. They are not required to, but
10 they have that option. If rebuttal witnesses are called we
11 will go through the same process--Plaintiff will call them,
12 the Plaintiff will examine them under oath, the Defendant will
13 cross examine them under oath, and then we'll finish how many
14 ever, if any, witnesses on rebuttal the Plaintiff calls.

15 Once we've completed the Plaintiff's rebuttal case, if
16 they have one, or if the Plaintiff doesn't call rebuttal
17 witnesses and we've concluded at the end of the Defendant and
18 Intervenor's case in chief, then you will have heard all of
19 the evidence in this case. And once you've heard all the
20 evidence in this case, I will give you final instructions on
21 the law that you are to apply in answering the questions in
22 the verdict form.

23 After I have given you my final instructions, those are
24 sometimes called the Court's charge to the jury, once I have
25 done that, then counsel for the competing parties will present

1 their closing arguments and that's when they get to argue the
2 case. That's when they get to tell you what they think you
3 need to do as far as reaching a result and why and what
4 evidence that they've presented supports you reaching the
5 conclusions and the results that they think are proper.

6 So you'll hear from the Plaintiff for closing argument,
7 and then you'll hear from the Defendant and Intervenor, and
8 the Plaintiff gets to reserve some of their time and do a
9 final closing argument, if they choose to, and I suspect that
10 they will. That's typical. Each side gets the same amount of
11 time to present closing argument, but the Plaintiff gets to
12 divide theirs to go first and last because the burden of proof
13 rests on the Plaintiff, which I'm sure the Defendant and
14 Intervenor will point out to you over the course of the trial.

15 After you've heard closing arguments from both sides and
16 after you've received the Court's charge to the jury, my final
17 instructions to you, that's when I will say those magic words,
18 "Ladies and gentlemen of the jury, you may now retire to the
19 jury room to deliberate on your verdict," and that's when you
20 go from being prohibited to discussing the evidence and the
21 trial with each other to being required to discuss the
22 evidence and the trial with each other in an effort to reach a
23 unanimous decision about how to answer the written questions
24 in the verdict form that I will send back with you when you
25 retire to deliberate.

1 So that's the structure of how this is going to happen,
2 and I want you to have that in mind so you can follow along as
3 we go through the trial and know which step in the process
4 we're on as we get there.

5 Now, with that, ladies and gentlemen, I'm going to excuse
6 you for lunch. It should be waiting for you in the jury room.
7 And it is about a quarter until 12:00. We will probably take
8 close to -- we'll take, give or take, an hour for lunch today.
9 So I should have you back in here about a quarter until 1:00
10 or thereabouts.

11 With those instructions, please enjoy your lunch. And
12 the members of the jury are excused for lunch at this time.

13 (Whereupon, the jury left the courtroom.)

14 THE COURT: Please be seated.

15 Does Plaintiff have anything to raise with the Court
16 before we recess for lunch?

17 MR. GRINSTEIN: Nothing from the Plaintiff, Your
18 Honor.

19 THE COURT: How about Defendant and Intervenor?

20 MR. DACUS: We do not, Your Honor. Thank you.

21 THE COURT: All right. We'll try to make it
22 approximately an hour. But, as I mentioned to you this
23 morning in chambers, I have an obligation at 12:15 that should
24 take me about 20 minutes. It's away from the courthouse.
25 I'll get back here as quick as I can. Hopefully we can start

1 in about 60 minutes.

2 With that, we're excused for lunch.

3 And the Court stands in recess.

4 (Lunch recess.)

5 THE COURT: Be seated, please.

6 Counsel, I have been told by my law clerks that when we
7 met in chambers this morning and we talked about the fact that
8 the overnight binders were late, I said 7:30. They should be
9 here by 7:00 each morning so that we can meet by 7:30. I
10 think you already knew that, but just to make sure there's no
11 doubt, I wanted to clarify that.

12 All right. Is there anything I need to take up with
13 counsel before I bring in the jury and proceed with the
14 Court's preliminary jury instructions?

15 MR. GRINSTEIN: Nothing from the Plaintiff, Your
16 Honor.

17 MR. DACUS: Nothing from the Defendant, Your Honor.

18 THE COURT: All right. Let's bring in the jury,
19 please.

20 (Whereupon, the jury entered the courtroom.)

21 THE COURT: Please be seated, ladies and gentlemen.

22 Welcome back from lunch. I now have some preliminary
23 instructions that I need to give to the members of the jury
24 and on the record before we proceed with counsel's opening
25 statements from the parties and then get onto the evidence.

1 You've now been sworn as the jurors in this case and, as
2 the jury, you are the sole judges of the facts, and as such,
3 you will decide and determine what all the facts are in this
4 case. As the Judge, I will give you instructions on the law,
5 decide questions of law, evidence, and procedure that arise
6 during the course of the trial, and I'm responsible for
7 maintaining an efficient flow of the evidence and maintaining
8 the decorum of the courtroom.

9 At the end of the evidence, ladies and gentlemen, I'll
10 give you detailed instructions about the law to apply in
11 deciding this case and I'll give you a list of questions that
12 you are then to answer. This list of questions, as I
13 mentioned, is called the verdict form. Your answers to those
14 questions will need to be unanimous and your unanimous answers
15 to those questions will constitute the jury's verdict in this
16 case.

17 Now, let me briefly tell you what this case is about. As
18 you know, this involves disputes regarding two United States
19 patents. Now, I know that you've all seen the patent video
20 prepared by the Federal Judicial Center, but I need to give
21 you these instructions now and on the record about a patent
22 and how one is obtained.

23 Patents are either granted or denied by the United States
24 Patent and Trademark Office, which is sometimes referred to
25 for short simply as either the Patent Office or the PTO. A

1 valid United States patent gives the patentholder the right
2 for up to 20 years from the date the patent application is
3 filed to prevent others from making, using, offering to sell,
4 or selling the patented invention within the United States or
5 importing it into the United States without the patentholder's
6 permission.

7 A patent is a form of property, and it's known as
8 intellectual property, and like all forms of property, a
9 patent may be bought or sold.

10 The violation of a patentholder's rights is called
11 infringement. A patentholder may try to enforce a patent
12 against persons it believes to be infringing by filing a
13 lawsuit in federal court, and that's what we have before us in
14 this case.

15 The process of obtaining a patent from the PTO is called
16 patent prosecution. To obtain a patent, one must first file
17 an application with the Patent Office. The Patent Office is
18 an agency of the United States government. It's actually a
19 part of the U.S. Department of Commerce, and it employs
20 trained examiners who review patent applications and they
21 review patents as well.

22 Patent application, I should say, includes within it
23 something that is called a specification. The specification
24 contains a written description of the claimed invention
25 telling what the invention is, how it works, how to make it,

1 and how to use it. The specification concludes or ends with
2 one or more numbered sentences. These numbered sentences are
3 called the patent claims. When a patent is granted by the
4 PTO, it is the claims, ladies and gentlemen, that define the
5 boundaries of the patent's protection and give notice to the
6 public of those boundaries.

7 Now, patent claims may exist in two forms or two types
8 referred to as either independent claims or dependent claims.
9 An independent patent claim does not refer to any other claim
10 in the patent. It is independent. It stands alone. It's not
11 necessary to look at any other claim within the patent to
12 determine what an independent claim covers.

13 On the other hand, a dependent patent claim refers to at
14 least one other claim within the patent. A dependent claim
15 includes the elements or limitations of the other claim or
16 claims to which it refers or, as we sometimes say, from which
17 it depends, as well as the additional elements or limitations
18 of the dependent claim itself. Therefore, to determine what a
19 dependent claim covers, it's necessary to look at both the
20 dependent claim itself and the independent claim or claims
21 from which it refers or from -- to which it refers or, as we
22 say, from which it depends.

23 Now, the claims in the patents-in-suit use the
24 word 'comprising.' Comprising means including or containing.
25 A claim that includes the word 'comprising' is not limited to

1 the methods or devices having only the elements that are
2 recited in the claim, but also covers methods or devices that
3 add additional elements.

4 Let me give you an example. If you take the example of a
5 claim that covers a table, if the claim recites a table
6 comprising a table top, legs, and glue, the claim will cover
7 any table that contains these three structures, even if it
8 also contains other structures, such as leaves to expand the
9 size of the tabletop or wheels to go on the ends of the legs.
10 Now, that's a very simple example using the word
11 'comprising' and what it means. In other words, ladies and
12 gentlemen, it could have other features in addition to those
13 that are covered by the patent now.

14 After the applicant files his or her application with the
15 Patent Office, an examiner is assigned to that application by
16 the Patent Office, and the examiner reviews the application to
17 determine whether or not the asserted claims are
18 patentable--that is to say, appropriate for patent
19 protection--and whether or not the specification adequately
20 describes the invention that is claimed.

21 In examining a patent application, the examiner reviews
22 certain information about the state of the technology at the
23 time the application was filed. The PTO, the Patent Office,
24 searches for and reviews this type of information that's
25 publicly available or that was submitted by the applicant, and

1 this type of information is called prior art. The examiner
2 reviews this prior art to determine whether or not the
3 invention claimed is truly an advance over the state of the
4 art at the time.

5 Now, prior art is defined by law, and I'll give you
6 specific instructions at a later time as to what constitutes
7 prior art. However, in general, prior art includes
8 information that demonstrates the state of the technology that
9 existed before the claimed invention was made or before the
10 application for a patent was filed.

11 Now, a patent also contains within it a list of certain
12 prior art that the examiner has considered in reviewing the
13 application. The items on this list -- the items of prior art
14 on this list are called the cited references.

15 Now, after the prior art search and examination of the
16 application, the examiner informs the applicant in writing of
17 what the examiner has found and whether the examiner considers
18 any claim within the application to be patentable, in which
19 case it would be allowed. And this writing from the examiner
20 to the applicant is called an office action.

21 Now, if the examiner rejects the claims, the applicant
22 has an opportunity to respond to the examiner to try to
23 persuade the examiner to allow the claims. The applicant also
24 has a chance to change or amend the claims or to submit new
25 claims.

1 Now, the papers generated in this back and forth between
2 the examiner and the applicant are called the prosecution
3 history, and this process, this prosecution history, may go
4 back and forth between the applicant and the examiner for some
5 time until the examiner is satisfied that the application
6 meets the requirements for a patent and, in that case, the
7 application issues as a United States patent. Or, in the
8 alternative, if the examiner ultimately concludes that the
9 application should be rejected, then no patent is issued.

10 Sometimes patents are issued after appeals within the PTO
11 or to a court.

12 Now, to help you follow the evidence, I'll give you a
13 brief summary of the positions of the competing parties in
14 this case.

15 As you know, the party that brings the lawsuit is called
16 the Plaintiff. The Plaintiff in this case is Finesse
17 Wireless, LLC., which you will hear sometimes referred to
18 during the trial simply as the Plaintiff. You may hear them
19 simply referred to as Finesse. And as you know, the party
20 against whom a lawsuit is brought is called the defendant. In
21 this case, the Defendant is AT&T Mobility, LLC, which you will
22 hear referred to during the trial either as the Defendant or
23 more likely as simply AT&T.

24 Now, after this lawsuit was filed, Nokia of America
25 Corporation, which you will hear called simply Nokia, joined

1 the case on the same side as AT&T. As I mentioned,
2 technically Nokia is called an Intervenor in this case because
3 they intervened or joined the case after it was filed. But
4 for the purposes of this trial, ladies and gentlemen, Nokia
5 and AT&T are in the same posture and, practically speaking,
6 you may even hear people refer to them together as Defendants
7 during the trial. Technically, we have a Defendant and an
8 Intervenor, but they're standing shoulder to shoulder and in
9 the same position in this case, and it is important for you to
10 consider it in that fashion.

11 Now, as I told you during jury selection, this case
12 involves allegations of patent infringement brought by Finesse
13 against Defendant AT&T and, of course, participating in the
14 trial with AT&T is Nokia. And as I've already mentioned,
15 these are two United States patents asserted by Finesse. They
16 are specifically United States Patent No. 7,346,134 and United
17 States Patent No. 9,548,775. And as you may recall from the
18 patent video, patents are commonly referred to by their last
19 three digits in the patent number. So in this case Patent No.
20 7,346,134 is going to be referred to as the '134 patent. You
21 may hear it be called the '134 Patent. And Patent No.
22 9,548,775 will be referred to as the '775 Patent. You might
23 hear it called the '775 Patent. They will be referred to by
24 their last three digits.

25 And these patents will be referred to in all likelihood

1 during the trial from time to time jointly or collectively as
2 the patents-in-suit. You may hear them referred to
3 collectively or jointly as the asserted patents. And these
4 two asserted patents generally relate to radio receivers and
5 signal interference.

6 Now, the Plaintiff in this case, Finesse, contends that
7 AT&T and Nokia are directly infringing certain claims of the
8 patents-in-suit by importing, using, offering for sale, and
9 selling mobile networks and networking equipment that include
10 its patented technology. Plaintiff contends that it's
11 entitled to money damages as a result of that asserted
12 infringement.

13 Now, AT&T and Nokia deny that there is any infringement
14 of the patents-in-suit by AT&T or by Nokia, and they contend
15 that the patents-in-suit, the asserted claims from the
16 patents-in-suit, that is, are invalid because they are obvious
17 in the light of prior art.

18 Now, I know, ladies and gentlemen, there are many new
19 words and concepts that have been thrown at you today and
20 since you appeared for jury duty. I'm going to define a lot
21 of those terms and concepts for you as we go through these
22 instructions. The attorneys are going to discuss them and
23 talk about them in their opening statements. The witnesses
24 called to testify in this case are going to help you through
25 their testimony to understand these terms and concepts. So,

1 please, do not feel overwhelmed at this stage. I promise you
2 it will all come together as we go through the trial.

3 Now, one of your jobs in this case is to decide whether
4 or not the asserted claims of the patents-in-suit have been
5 infringed. You'll also be asked to decide whether or not
6 certain of the asserted claims from the patents-in-suit are
7 invalid. If you decide that any of the asserted claims from
8 the patents-in-suit have been infringed and are not invalid,
9 then you'll need to decide what amount of money damages, if
10 any, should be awarded to the Plaintiffs as compensation for
11 that infringement.

12 Now, my job is to tell you what the law is, to handle
13 rulings on evidence and procedure, and to oversee the conduct
14 of the trial as efficiently and effectively as possible, and
15 to maintain the decorum of the courtroom. In determining the
16 law, ladies and gentlemen, it is specifically my job to
17 determine the meanings of any claim language from within the
18 asserted patents that needs to be construed or needs to be
19 interpreted.

20 I've already determined the meanings of certain claim
21 language from the patents-in-suit, and you must accept those
22 meanings as I give them to you and you must apply those
23 meanings when you decide whether or not any particular claim
24 has been infringed and when you decide whether or not any
25 particular claim is or is not invalid.

1 Now, you're going to be given a document in a few minutes
2 that refers to these meanings or instructions that the Court
3 has already put forward. For any claim term, any claim
4 language that the Court has not provided you with a definition
5 or an instruction, you are to apply the plain and ordinary
6 meaning of that claim language.

7 Now, if you're provided with a definition or a
8 construction coming from the Court, you must apply the Court's
9 definition or construction to those terms throughout the case.
10 However, my interpretation of some of the language from the
11 claims should not be taken by you to indicate that the Court
12 has any personal opinion or any opinion at all regarding the
13 issue of infringement because that, ladies and gentlemen, is
14 yours as the jury to decide and yours alone.

15 Now, I'll provide you with more detailed instruction on
16 the meanings of the claims before you retire to deliberate and
17 reach your verdict.

18 In deciding the issues that are before you, you will be
19 asked to consider specific legal rules, and I'll give you an
20 overview of those rules now, and then at the conclusion of the
21 case I'll give you much more detailed instruction.

22 The first issue that you are asked to decide is whether
23 the Defendant has infringed any of the asserted claims of the
24 patents-in-suit. Infringement, ladies and gentlemen, is
25 assessed and determined on a claim-by-claim basis. And the

1 Plaintiff must show you by a preponderance of the evidence
2 that a claim has been infringed. Therefore, there can be
3 infringement as to one claim but no infringement as to another
4 claim.

5 There are also a few different ways that a patent can be
6 infringed, and I'll explain the requirements for each of these
7 types of infringement to you in detail at the conclusion of
8 the case. But, in general, a defendant may infringe an
9 asserted patent by making, using, selling, or offering for
10 sale in the United States or importing into the United States
11 a product meeting all of the elements or requirements of the
12 claim asserted from the patent or one that practices all of
13 the required steps of an asserted claim. And I'll provide you
14 with more detailed instructions on the requirements for
15 infringement, as I said, at the conclusion of the case.

16 Now, the second issue that you'll be asked to decide is
17 whether or not the two asserted patents are invalid.
18 Invalidity, ladies and gentlemen, is a defense to
19 infringement. Therefore, even though the United States Patent
20 and Trademark Office has allowed the asserted claims and even
21 though an issued United States patent is presumed to be valid,
22 you, the jury, must decide whether those claims are invalid
23 after hearing all the evidence presented during this case.
24 You may find a patent claim to be invalid for a number of
25 reasons. These reasons include because the patent claim is

1 obvious to a person of ordinary skill in the art.

2 Now, as I mentioned, a way that a claim can be found to
3 be found invalid is that it may have been obvious. A claim
4 may be invalid if it would have been obvious to a person of
5 ordinary skill in the field of the technology of the patent at
6 the relevant time. Now, you'll need to consider a number of
7 questions in deciding whether the invention claimed in the
8 asserted patents is obvious, and I'll provide you with more
9 detailed instructions on these questions at the conclusion of
10 the trial.

11 Now, if you decide that any claim from the
12 patents-in-suit has been infringed and is not invalid, that
13 is, the presumption of validity has been maintained, then at
14 that point you will need to go further and decide what amount
15 of money damages should be awarded to the Plaintiff to
16 compensate it for the infringement of its patent claims.

17 A damages award, ladies and gentlemen, must be adequate
18 to compensate the patentholder for the infringement, and in no
19 event may a damages award be less than what the patentholder
20 would have received had it been paid a reasonable royalty for
21 the use of its patents. However the damages that you award,
22 if any, are meant to compensate the patentholder, and they are
23 not meant to punish the Defendant. You may not include in any
24 damages award an additional amount as a fine or a penalty
25 above what is necessary to fully compensate the patentholder

1 for the infringement.

2 I'll give you more detailed instructions on the
3 calculation of damages for this alleged infringement of the
4 patents-in-suit at the conclusion of the trial, including by
5 giving you specific instructions with regard to the
6 calculation of a reasonable royalty. However, ladies and
7 gentlemen, the fact that I'm instructing you on damages at all
8 does not mean that the Plaintiff is or is not entitled to
9 recover damages.

10 Now, over the course of this trial, you're going to be
11 hearing from a number of witnesses in this case, and I want
12 you to keep an open mind and listen to all the evidence and
13 not decide any of the facts until you have heard all the
14 evidence. This is important. While the witnesses are
15 testifying, remember you, the jury, will have to decide the
16 degree of credibility and believability to allocate to each of
17 the witnesses and the evidence and testimony that they give.

18 So while the witnesses are testifying, you should be
19 asking yourselves things like this: Does the witness impress
20 you as being truthful? Does he or she have a reason not to
21 tell the truth? Does he or she have a personal interest in
22 the outcome of the case? Does the witness seem to have a good
23 memory? Did he or she have an opportunity and ability to
24 observe accurately the things that they've testified about?
25 Did the witness appear to understand the questions clearly and

1 answer them directly? And, of course, does the witness'
2 testimony differ from the testimony of other witnesses? And
3 if it does, how does it differ? These are some of the kinds
4 of things that you should be thinking about while you are
5 listening to the testimony of each and every witness over the
6 course of this trial.

7 Now, I want to briefly talk to you about expert
8 witnesses. When knowledge of a technical subject may be
9 helpful to you as the jury, a person who has special training
10 and experience in that particular field, we call them an
11 expert witness, is permitted to testify to you about his or
12 her opinions on those technical matters. However, ladies and
13 gentlemen, you are not required to accept an expert witness'
14 or any witness' opinions at all. It's up to you to decide
15 whether you believe what a witness says, whether you believe
16 it's correct or incorrect, whether you want to believe it,
17 whether you want to give it any weight or not give it any
18 weight at all. That is part of your job as jurors in this
19 case.

20 Now, I expect that there will be expert witnesses
21 testifying in support of each of the sides in this case. But
22 when they do, it will be up to you to listen to their
23 qualifications, and when they give an opinion and explain the
24 basis for that opinion, you will have to evaluate what they
25 say, whether you believe it, and to what degree, if any, you

1 want to give that opinion weight.

2 Remember, ladies and gentlemen, judging and evaluating
3 the credibility and the believability of each and every
4 witness is an important part of your job as the jury.

5 Now, during the course of the trial, it's possible that
6 there will be testimony from one or more witnesses that will
7 be presented to you through what's called a deposition. In
8 trials like this, it's very difficult to get every witness
9 here at the same place at the same time to testify live from
10 the witness stand. So before the trial begins, the lawyers
11 for each side take the depositions of the witnesses.

12 In a deposition, a court reporter is present, the witness
13 is there, they are sworn and placed under oath, and counsel
14 for the competing parties are also there. Counsel will ask
15 the witness questions and the witness will answer those
16 questions under oath and both the questions and the answers
17 will be taken down and transcribed by the court reporter in
18 writing. Often those depositions are also videoed so that you
19 have both the written transcript and a video recording of the
20 witness answering the questions.

21 Now, it's important for you to understand that over the
22 course of this trial, witnesses can be presented to you by
23 deposition if they cannot be here in person. That means you
24 will see a video presentation of the witness' testimony rather
25 than the witness sitting in the witness box live. If there

1 wasn't a video recording, you will see the transcript and hear
2 people read the questions and answers back and forth into the
3 record.

4 It's important for you to understand, ladies and
5 gentlemen, that these depositions are taken under oath and you
6 should judge that testimony as to its believability and
7 credibility and in all respects to the best of your ability as
8 if the witness were physically present and gave their
9 testimony from the courtroom.

10 Also, as a practical matter, I want you to understand
11 that if witnesses are presented to you by video deposition
12 during this trial, it's likely that there will be breaks or
13 splices or changes in the voice and sound of the person asking
14 the questions, and let me explain to you why this will likely
15 be the case.

16 Most depositions of witnesses take seven hours to
17 complete. There may be 15 minutes' worth of testimony that
18 the parties believe you ought to hear as a part of this trial.
19 So rather than playing seven hours of video recordings for you
20 to hear 15 minutes, the questions and answers related to those
21 15 minutes will be spliced or cut out of the video and will be
22 put together and you will be played that 15 minutes' worth of
23 tape rather than having to sit through seven hours of the
24 video presentation.

25 And because of that process of cutting out those relevant

1 portions and putting them together, there may be a little
2 glitch or a skip. There may well be a little something that
3 makes it look like it's not completely continuous. You might
4 hear a different voice asking a question because a different
5 lawyer is asking a question for a different party. There may
6 be little small irregularities in that process.

7 If that happens, and that's very common, don't focus on
8 those irregularities. Focus on the questions asked and the
9 answers given. And understand that, by doing that, you are
10 saving yourselves and everybody here an awful lot of time by
11 allowing just the relevant portions to be presented to you as
12 opposed to the entire unedited, uncut deposition. But whether
13 it's long or whether it's short, you should to the best of
14 your ability judge video depositions and deposition testimony
15 in the same way as to credibility and believability as you
16 would an ordinary witness who appears live and testifies under
17 oath in the courtroom.

18 Also, ladies and gentlemen, you're going to be shown
19 several documents over the course of the trial, and it's
20 possible that there will be documents shown to you that may
21 have one or more provisions in those documents redacted or,
22 said another way, blacked out. That happens because there are
23 sometimes included portions in documents that are not relevant
24 or the Court has determined should not be shown to the jury
25 for other reasons.

1 If you are shown exhibits in this trial that have
2 anything within them redacted or blacked out, don't focus on
3 what's blacked out, don't try to guess what was not visible to
4 you, don't speculate about that. Focus on what you can read,
5 focus on what is not redacted and the meaning and the
6 importance of that material as presented that is visible to
7 you and presented to you. Don't get confused or sidetracked
8 by those redactions, don't try to guess why they're redacted.
9 Just ignore the redacted parts, focus on the parts that are
10 presented to you that are legible and readable and that you
11 have been given to consider.

12 Now, over the course of the trial, notwithstanding all
13 the pretrial effort that's gone into preparing this case for
14 presentation to you, the jury, it's possible that the lawyers
15 from either side or both sides will make objections during the
16 course of the trial. It's the duty of an attorney to object
17 when the other side presents or purports to present evidence
18 to the jury that the attorney believes is not proper under the
19 rules of evidence or the rules of the Court.

20 Now, upon allowing the testimony or other evidence to be
21 presented over the objection of an attorney, the Court does
22 not, unless expressly stated, indicate any opinion about the
23 weight or effect of that evidence. As I told you, you, the
24 jury, are the sole judges of the credibility and believability
25 of all the witnesses and the weight and what effect to give to

1 all the evidence.

2 Now, I'd like to compliment counsel in this case because
3 through various and lengthy pretrial procedures that took
4 place long before you were summonsed to appear, much work has
5 gone into preparing this case for you, and a lot of the
6 exhibits that are shown to you during this trial have already
7 been presented to the Court. And if there were objections
8 from the other side to those proposed exhibits, the Court
9 heard those objections and considered those arguments, and the
10 Court has already ruled on which exhibits should be admitted
11 and shown to you when the trial takes place and which exhibits
12 are not admissible and should not be shown to you during the
13 trial of the case.

14 That means, ladies and gentlemen, I'm not sure you
15 appreciate this, but this means a lot of time has been saved
16 so that during this trial these documents do not have to be
17 presented for the first time, objections raised, arguments
18 presented, the Court consider those arguments and rule on
19 those exhibits. All that's been done in advance so that when
20 an exhibit is presented to you during this trial, you will
21 know the Court has already found it to be admissible and it's
22 proper for you to consider.

23 So there probably are more hours than I can count that
24 have been saved that you will not have to go through because
25 those efforts have already been undertaken by the Court and by

1 counsel in advance of the trial. So any exhibit that's shown
2 to you means that the Court's already ruled on its
3 admissibility and the lawyers will present it and ask
4 questions about it and put it in a proper context.

5 Now, even though that's the case, it is still possible
6 that objections may arise over the course of this trial. If I
7 should sustain an objection to a question addressed to a
8 witness, then you must disregard the question entirely and you
9 may draw no inference from its wording or speculate or guess
10 about what the witness would have said if I had permitted them
11 to answer the question. On the other hand, if I overrule an
12 objection to a question addressed to a witness, then you
13 should consider the question and the answer just as if no
14 objection had been made.

15 Now, you should understand that the law of the United
16 States permits a United States district judge to comment to
17 the jury on the evidence in a case, but the comments by the
18 judge on the evidence are only an expression of the judge's
19 opinion as to that evidence and the jury is free to disregard
20 those comments in their entirety because, as I've told you,
21 you, the jury, are the sole judges of the facts, you are the
22 sole judges of the credibility of the witnesses, and you are
23 the sole judges as to how much weight, if any, you will give
24 to all the testimony that is presented.

25 And even though the law permits me as a United States

1 district judge to comment to you on the evidence, as I told
2 you earlier, I am going to work very hard not to do that, not
3 to comment on the witnesses or the evidence because, as I say,
4 considering that testimony, determining the facts from it,
5 judging the credibility and believability of all the evidence
6 presented, is your job in this case.

7 Now, Mr. McRoberts, our court reporter, who is seated in
8 front of me, will take down everything that is said in the
9 courtroom. He did that beginning with jury selection today.
10 That's why I gave instructions about making sure the question
11 was finished before the answer was given, because when two
12 people talk at the same time, it's almost impossible for the
13 court reporter to accurately put down in writing what was
14 said.

15 All of what is said during this trial will be included in
16 this written transcript that the court reporter is preparing.
17 But, ladies and gentlemen, the written version of everything
18 that's said, the transcript of this trial, is not going to be
19 available for you to take with you to the jury room to review
20 when you deliberate on this -- in this case and when you
21 address the questions contained in the verdict form. The
22 transcript is prepared in case there is an appeal of the
23 decision in this case to a higher court. So that means you're
24 going to have to rely on your memories of the evidence
25 throughout the trial.

1 In a minute each of you are going to be given a juror
2 notebook, and in the front of that notebook you will find
3 various places where you can take notes during the course of
4 the trial. There should be a new legal pad included in there
5 and a pen that you can use to take notes, if you choose to.
6 It's up to each of you, ladies and gentlemen, to determine if
7 you want to take notes at all during the trial and, if you
8 decide to take notes, how extensive you want those notes to
9 be. That is up to you.

10 But, remember, any notes you take over the course of the
11 trial are for your own personal use. You still have to rely
12 on your memory of the evidence, and your notes should not
13 predominate over your independent recollection of the
14 evidence, which means you must pay close attention to the
15 testimony of each witness as they testify over the course of
16 the trial. And you should not abandon your own recollection
17 because some other juror's notes indicate something different.
18 Your notes, if you take them, are meant to refresh your
19 recollection, and that's the only reason you should be keeping
20 them.

21 I'm going to ask our Court Security Officer to pass out
22 these juror notebooks to the members of the jury at this time.

23 (Pause in proceedings.)

24 THE COURT: As you open these notebooks, ladies and
25 gentlemen, you'll find at the front you should have a complete

1 copy of each of the two patents that are at issue in this
2 case.

3 You'll also find in there a ledger or a side-by-side
4 comparison showing you certain language from the asserted
5 claims that the Court has already interpreted or construed,
6 and those are the prior constructions or definitions that I
7 mentioned earlier that I am giving to you and that you must
8 apply in deciding the issues in this case.

9 Then behind that area of the notebooks, you should find
10 tabbed witness pages with a page for each witness that may
11 testify in this case. On each of those pages you should find
12 a head-and-shoulders photograph of the witness and their name.
13 The Court's found over many years that it's very helpful to
14 the jury when you retire to deliberate after hearing many,
15 many witnesses to be able to flip back and see a picture of
16 each witness to recall his testimony. Those pages also have
17 ruled lines on them for additional note-taking if you wish to
18 take additional notes there.

19 And then behind those tabbed witness pages you should
20 find, as I mentioned, a new legal pad that you can take
21 additional notes on. And there should be, I think in the
22 front pocket, a new pen for each of you to use for note-taking
23 just to be convenient.

24 Now, these notebooks, ladies and gentlemen, they should
25 be in your possession at all times. They should not be left

1 around where somebody might pick them up and start to look
2 through them. So they should either be with you as they are
3 now in the jury box while you're in the courtroom or they
4 should be in the jury room where you can leave them there.

5 When you leave each evening to go home, I'm going to ask
6 you to take those notebooks and leave them closed in the jury
7 room on the table so they will be there in the morning when
8 you request get back. And if you leave the courtroom, either
9 I will let you take those notebooks with you or there will be
10 certain times where we will take short breaks where you will
11 not be out of the courtroom very long and I'll simply say,
12 ladies and gentlemen, you may leave your notebooks closed and
13 in your chairs, in which case you can just close them and
14 leave them in your seat because we'll be back in here pretty
15 quickly.

16 But I'll either give you instructions as to whether to
17 leave them in your chairs during the short break or, if I
18 don't, you should take them with you when you leave the
19 courtroom into the jury room. Again, it is important these
20 not be left laying around where people other than members of
21 the jury would have access to them.

22 Now, in a moment we are going to hear opening statements
23 from the lawyers for the competing sides in this case. As I
24 mentioned, opening statements are designed to give you, the
25 jury, a roadmap of what each side expects to present by way of

1 its evidence.

2 And you should remember throughout the trial, ladies and
3 gentlemen, that what the lawyers tell you is not evidence.
4 The evidence is the sworn testimony of the witnesses from the
5 witness stand subject to cross examination and given in open
6 court, as well as the deposition testimony of witnesses who
7 are presented that way, as I've already discussed with you,
8 rather than physically being in the courtroom, and those
9 exhibits which the Court has already considered, found to be
10 admissible under the rules of evidence, and has admitted into
11 evidence. The testimony of the witnesses, either live or by
12 deposition, and the exhibits the Court has already admitted,
13 those are the totality of the evidence in this case. What the
14 lawyers tell you is not evidence.

15 Now, the lawyers have a duty to point out to you what
16 they believe the evidence is and what they believe the
17 evidence will show. But, remember, what they tell you is not
18 evidence.

19 Now, after the opening statements are given, the
20 Plaintiff will proceed to present the Plaintiff's evidence.
21 As I mentioned, that's called the Plaintiff's case in chief.
22 Once the Plaintiff completes the Plaintiff's case in chief,
23 then we'll turn to the Defendant and Intervenor's case in
24 chief. Once that's completed, we will see if the Plaintiff
25 elects to call rebuttal witnesses. If they do, we'll finish

1 those rebuttal witnesses. If they don't, then I will give you
2 at that point my final instructions on the law called the
3 Court's charge to the jury and the counsel for the competing
4 parties will present their final closing arguments to you.

5 Then once you've heard those closing arguments from
6 counsel, then I will direct you to retire to the jury room, to
7 take the verdict form with you with those written questions
8 contained in it, and to deliberate on your verdict and arrive
9 at, as best you can, unanimous answers to those questions in
10 the verdict form. That's the structure of the trial.

11 Let me repeat my earlier instruction to you that when you
12 retire to the jury room to deliberate on your verdict, the
13 only evidence, the only information you should have to draw
14 upon to answer those questions, is the sworn testimony of the
15 witnesses and the exhibits presented during the trial; nothing
16 else.

17 And that is a fundamental principle. So you must not
18 discuss, communicate in any way with anyone anything about
19 this case, including any discussions or communications among
20 the eight of you, until I have directed you to retire to the
21 jury room to consider and to deliberate on your verdict. And
22 as I mentioned, at that particular time in the future, then it
23 will become your duty to discuss the evidence and the
24 witnesses in light of those questions in the verdict form to
25 reach unanimous conclusions as to how to answer those

1 questions.

2 Also, one other time let me remind you, it's very likely
3 over the course of this trial you're going to come in close
4 contact with one or more persons associated with these two
5 trial teams. When that happens, they're not going to talk,
6 they're not going to speak, they're not going to engage in
7 conversation, they're not going to be friendly, they're just
8 going to walk right by you.

9 Don't hold that against them. Understand they're
10 following my instructions and I instructed them to do that
11 because, again, most of these things all come back to that
12 first original principle that the only information you should
13 have to draw upon to answer the questions in the verdict form
14 is the sworn testimony of the witnesses and the admitted
15 exhibits during the trial. Most of these instructions I give
16 to you are based on that fundamental principle.

17 So when these parties or lawyers or witnesses or support
18 staff don't speak, they're not friendly, they're not engaging,
19 don't hold it against them, don't be offended, don't think
20 they're being rude, simply understand they are following my
21 instructions and what the Court requires of them.

22 All right, ladies and gentlemen. With that, we will
23 proceed to hear opening statements from the parties in the
24 case.

25 Plaintiff may present its opening statement to the jury.

1 Would you like a warning on your time, Mr. Grinstein?

2 MR. GRINSTEIN: Two minutes, please, Your Honor.

3 THE COURT: I'll warn you when you have two minutes
4 remaining. You may proceed with the Plaintiff's opening
5 statement.

6 MR. GRINSTEIN: Good afternoon, ladies and gentlemen
7 of the jury.

8 Respect. It's something we're all taught at a very early
9 age. Respect your elders, respect your mom and dad, respect
10 the law, respect property. If you see a piece of property and
11 it's got a fence line, you don't cross over that fence unless
12 you've got permission.

13 Well, even though we're all taught about respect at an
14 early age, sometimes that lesson doesn't take, and that's why
15 we're here today. We're here because we contend that the
16 Defendants AT&T and Nokia don't respect Finesse's intellectual
17 property, its property lines, or what it says its property is
18 worth.

19 Now, of course, the parties disagree with that, and they
20 disagree about that, and that's why you are here. You are
21 here to tell us who is right.

22 Are Finesse's property lines being respected? That's the
23 first issue in this case. That's the issue of infringement.
24 Is AT&T using Finesse's intellectual property?

25 The second issue in this case is validity. Are Finesse's

1 patents good and valid, kind of like having good title to
2 land.

3 And the third issue in this case is damages--what does
4 AT&T owe to Finesse for its use of Finesse's property?

5 Now, over the next 30 minutes or so, I'm going to share
6 with you what I expect the evidence to show about those three
7 issues and how I expect that evidence to show that lack of
8 respect. But first things first. Let me make some
9 introductions.

10 My name is Joe Grinstein. I am one of the lawyers for
11 the Plaintiff in this case, a company called Finesse Wireless.

12 And with me here at counsel's table is Mr. Frank Smith.
13 Mr. Smith is the CEO of Finesse, and he is also the inventor
14 of the two patents that are at issue in this case.

15 Now, as you have probably heard, this is a business
16 dispute about patent infringement. My client Finesse Wireless
17 owns two United States patents, the '134 patent and the '775
18 Patent. And Finesse contends that the Defendant in this case,
19 AT&T, infringes on Finesse's patents by using certain
20 equipment in its cell phone towers. And the name of that
21 equipment is a radio. Those radios are manufactured by the
22 other party in this case, Nokia. And it is the Nokia radios
23 on AT&T's cell phone towers that are the equipment that's used
24 to transmit and receive signals.

25 Now, during the course of my statement today, I'm

1 probably going to refer to both of those parties as the
2 Defendants just to save a few words here and there.

3 Before I go any further, though, I do want to talk to
4 you-all about the patent system in the United States. Now,
5 patents are so important and were so important to our founding
6 fathers that they put the patent system into the United States
7 Constitution. It's right there in Article I, Section 8.

8 And the idea behind the U.S. patent system is to
9 encourage inventors to file their new inventions publicly with
10 the U.S. government instead of keeping it to themselves. And
11 the idea there is that by filing these inventions publicly,
12 other people in the industry could learn from those
13 inventions, be inspired by them, maybe even improve on them
14 And in exchange for filing your inventions publicly with the
15 U.S. government, the U.S. government issues you a patent.

16 And what does a patent give to you? Well, it says it
17 right there on the very first page of a patent: A patent
18 gives the person who owns it for a period of time the right to
19 exclude others from making, using, or selling products that
20 employ the patented inventions.

21 Now, you know, one thing you can do is think of a patent
22 like a deed to a piece of property. You know, every piece of
23 property has got its boundary lines, and sometimes people even
24 put fences around those boundary lines. Well, patents are
25 kind of like intellectual property, and to find the boundaries

1 of a patent, you look to the very last section of the patent,
2 the section called the claims, and that is where the inventor
3 declares to the whole world where his invention starts and
4 where it stops.

5 Now, of course, if you've got a piece of property, you
6 have the right to tell people stay off my property. And so,
7 you know, if an oil company thinks you've got oil under your
8 land, they can't just come on your property and start
9 drilling. That would be trespassing. And that's true even if
10 you yourself aren't drilling on your property. You know, the
11 oil company can't say, you know what, you're not using your
12 property so I'm going to use it for you. That's still
13 trespassing.

14 Well, intellectual property is similar. Intellectual
15 property, patent defines your property rights and no one can
16 use those property rights without your permission. Even if
17 you yourself aren't using them, even if you're not making a
18 product using your patent, that doesn't mean someone else can
19 do it for you.

20 So let me now talk to you a little bit about my client
21 Finesse. Finesse is a company that was founded in 2001 by Mr.
22 Frank Smith, and Mr. Smith founded Finesse with the goal of
23 creating a new and improved type of wireless communications
24 technology. And one of the things he really wanted to work on
25 improving was how the wireless industry dealt with the problem

1 of interference.

2 What is interference? Well, it's kind of like when
3 there's two signals out there in the world and they overlap
4 with each other so it makes it kind of hard to hear the one
5 signal that you're interested in. You-all might have
6 experienced interference, say, in driving in your car and
7 you're listening to a radio station from one city, and you
8 drive and get closer to a new city, that city's radio station
9 starts interfering with the first radio station, it gets all
10 staticky, hard to hear. That's an example of interference.

11 Now, around this time in 2001, Mr. Smith got interested
12 in trying to address an interference problem that he had
13 previously encountered in his career, and it was a problem
14 called passive intermodulation interference. You're going to
15 hear a lot about this particular term. It's often abbreviated
16 PIM, P-I-M. Now, Mr. Smith is going to testify he's going
17 explain to you all about PIM, but suffice it to say, it is a
18 particular kind of interference that arises from physical
19 objects in the world.

20 Now, physical objects in the world can put off signals
21 that are unwanted. Sometimes those come from cell phones,
22 cell tower equipment. Sometimes those can come from a nearby
23 metal roof or nearby car. But when they put off those
24 signals, they can interfere with the actual cell signals that
25 are trying to be transmitted from the cell phone tower.

1 That's going to carry the sort of things that we're interested
2 in receiving, cell phone customers want, like voice, text,
3 data, that sort of thing.

4 Now, Mr. Smith, when he testifies to you, is going to
5 explain to you all about what passive intermodulation
6 interference is all about. But, you know, one thing we should
7 focus on is how important the issue of interference is to the
8 cell phone industry because interference causes all sorts of
9 problems for you when you use your cell phone. It can cause
10 you to drop calls, it can cause your data to be really slow,
11 the sort of things cell phone customers don't like.

12 And it's a particularly big problem for cell phone
13 companies like AT&T because it diminishes the value of a very
14 important asset that they own called spectrum. What is
15 spectrum? Spectrum, another word for it is bandwidth. It's
16 kind of the capacity to carry all this data through the air
17 waves.

18 And you will hear evidence in this case that spectrum is
19 very, very expensive. Cell phone companies spend billions of
20 dollars to acquire the rights to this spectrum from the U.S.
21 government, which is the entity that sells it. And so because
22 spectrum is so important, companies like AT&T are really
23 focused on ways to maximize the efficiency, that they use
24 their spectrum, because they spent so much money on it. And
25 that is where Mr. Smith's invention comes in.

1 Now, around this time in 2001, Mr. Smith started to think
2 about the problem of passive intermodulation interference, and
3 he realized no one has ever really solved this problem before.
4 Now, there were ways to reduce this passive intermodulation.
5 One of those ways was to send workers up to cell phone towers
6 where they could fix the connections on the towers, straighten
7 up the wires, do things like that to try to improve this
8 interference problem. That is something that is known as site
9 hygiene.

10 But you will hear evidence in this case that, not
11 surprisingly, site hygiene is not a perfect solution to this
12 problem because things like rust and the weather mean that
13 you're constantly having to send out technicians to your cell
14 phone towers to fix things and that can be expensive and
15 inefficient.

16 So Mr. Smith started thinking of ways how can we deal
17 with this intermodulation problem, and at first he considered
18 what was a more conventional approach to it which is known as
19 filtering. What does that mean? Well, it's kind of like just
20 trying not to listen to the problematic interference. But as
21 Mr. Smith thought about this more and more, he concluded that
22 the better tactic wasn't just to filter this interference but
23 it was to cancel it altogether. And that's what Mr. Smith
24 invented was a system for something called passive
25 intermodulation cancellation. That's another term you're

1 going to hear a lot of in this case, PIM-C.

2 Now, I want to be clear about this. Mr. Smith did not
3 invent the entire concept of PIM-C. He was not the first
4 person to ever think, you know, it would be really useful to
5 cancel passive intermodulation. People have thought of that
6 before, but they'd never really come up with a workable way to
7 do it. And that's what Mr. Smith did. Mr. Smith invented the
8 first effective technique for conducting passive
9 intermodulation cancellation, so effective that AT&T and Nokia
10 use it extensively today.

11 So what did Mr. Smith do with his new invention after he
12 developed it? Well, he went out to the market and he tried to
13 interest other companies in either buying equipment with his
14 PIM-C invention in it or licensing his technology from it.
15 And this was in early years, 2001, 2002, before the U.S.
16 Patent Office had even granted him patents. And he went to a
17 variety of companies to talk about these sort of business
18 issues, companies like L3, Qualcomm, AT&T, Nokia.

19 And when he went to those companies, he encountered a
20 problem that has really plagued inventors for hundreds, maybe
21 thousands, of years, and that problem was he was ahead of his
22 time. You see, back at this time, 2002, who would have known
23 that we use so much spectrum today for doing things like
24 sending videos to our family or watching streaming movies.
25 You know, the iPhone, that wasn't even introduced until 2007.

1 Netflix, they didn't start streaming movies to people until
2 years after that.

3 So over the years spectrum has become more and more
4 valuable to these cell phone companies. I mean, they just
5 can't get enough of it. But that wasn't the case back in 2001
6 and 2002.

7 And so, for example, Mr. Smith communicated with Nokia,
8 and he shared with them the basis of his technology and he
9 told them what he thought about the technology. There was
10 some back and forth with them.

11 Now, the evidence will show that Nokia didn't respond to
12 Mr. Smith and say, you know, there's no need for PIM-C. They
13 didn't respond to Mr. Smith and say, your technology is no
14 good, it will never work. They didn't respond to Mr. Smith
15 and say, your technology is old, people have thought of this
16 before.

17 Instead, Nokia just wasn't interested at that time. They
18 for whatever reason didn't think that they were ready for that
19 technology. And that is largely the response he got from the
20 other companies in this time period who Mr. Smith went and
21 talked to. For example, around 2011, Mr. Smith had some
22 conversations with a company called Intellectual Ventures to
23 talk about buying these patents. But because the market for
24 PIM-C hadn't really developed, Intellectual Ventures didn't
25 offer him very much money and the deal didn't happen.

1 So I'm not saying that all these companies 10, 20 years
2 ago that were talking to Finesse were disrespecting Finesse.
3 I don't think they were. They were just not ready for his
4 technology when he was presenting it to them. That being
5 said, eventually the industry caught up with Mr. Smith and
6 spectrum started to get more and more important to companies
7 like AT&T. And, therefore, AT&T started to worry more and
8 more about interference generally and passive intermodulation
9 specifically.

10 So, for example, we expect to show you in this case an
11 exhibit, Exhibit 611, in which an internal AT&T memo describes
12 this passive intermodulation problem as the grim reaper of its
13 network. Now, with this document I want to say a couple of
14 things.

15 You are likely to hear in this case AT&T explaining
16 documents like this one and others as saying they deal with a
17 kind of PIM called external PIM, and it's even in the title of
18 this document, and the Nokia radios that are accused of
19 infringement in this case deal with a different kind of PIM,
20 internal PIM. I will say that's sort of right, at least from
21 our perspective.

22 First of all, the documents in this case tend to mix and
23 match their discussions of this external versus internal PIM.
24 I will also note that we will expect the evidence to show that
25 the Nokia radios in this case actually took some of that

1 external PIM and moved it internal into the radio and then
2 canceled it.

3 So, in any event, what if a company could come up with a
4 solution to take care of that grim reaper, to take care of
5 that big problem for AT&T, and that's what Nokia did. Nokia
6 started offering PIM-C in its radios to handle passive
7 intermodulation.

8 Now, why did it choose PIM-C as its solution? You will
9 see that in documents we will introduce like Plaintiff's
10 Exhibit 999. In this particular exhibit, Nokia notes that
11 this passive intermodulation problem is a problem out there
12 that they need to deal with. Filtering is not the way to fix
13 the problem. They need to fix it by cancellation, which
14 interestingly this document is from 2018, is the exact same
15 solution that Mr. Smith had thought of 17 years earlier.
16 Finally, the industry had caught up with him.

17 So Nokia started making these radios with PIM-C, AT&T
18 started buying them and using them. And we will show you
19 during the course of this trial internal documents from AT&T
20 in which AT&T expresses that it's satisfied and it likes those
21 PIM-C radios from Nokia.

22 So, for example, we will show you Plaintiff's Exhibit
23 707. This is an internal email from AT&T with a bunch of AT&T
24 engineers talking about these Nokia PIM-C radios. What do
25 they say? It's really good stuff here, pretty sweet, and this

1 product makes band-29, our bandwidth, much more valuable to
2 AT&T.

3 So let's talk about the three issues in this case that I
4 mentioned. The first issue in this case will be the issue of
5 infringement, and that is the question: Are AT&T and Nokia on
6 Finesse's property?

7 Now, this is our burden to prove to you infringement, and
8 we will have to prove infringement by what is known as a
9 preponderance of the evidence. The Judge will explain to you
10 what that means. For our purposes, I like to think of it as
11 we have to show you that it is more likely than not that the
12 Defendants infringe these patents.

13 To help you come to that conclusion, we are going to
14 offer the testimony of Dr. Jonathan Wells, who is out there in
15 the audience. Doctor Wells is -- has a Ph.D. from the
16 University of Bath in England. So I hope you-all enjoy his
17 accent. He has more than 30 years of experience in wireless
18 technologies. He's even written a book on a key aspect of 5G
19 technology. We will be presenting him as an expert witness.

20 And what Doctor Wells has done is conduct an extensive
21 investigation of the way that Nokia's radios operate on AT&T's
22 cell towers, and he's taken that investigation and he has
23 applied it to the language of the claims of the Finesse
24 patents element-by-element.

25 Now, I'm not going to go through all that analysis right

1 now. I don't have the time to do that. I will leave that
2 hard work to Doctor Wells. I will say it will probably take
3 him a couple of hours to go through that analysis. He's going
4 to try to do it as quickly and efficiently as he possibly can,
5 but do know it is our burden to prove infringement. And so
6 Doctor Wells is going to go element-by-element and show you
7 what he needs to show you to prove that infringement to you.

8 Now, while we're on the subject of infringement, I do
9 want to say one other thing about that topic, and that is
10 infringement is not the same thing as copying. So to prove
11 that the Defendants are infringing Finesse's patents, we do
12 not have to show that the Defendants looked at those patents
13 and copied Finesse's designs. That is not what we have to
14 show. In fact, someone can be liable for patent infringement
15 even if they don't know about the patent. So, in other words,
16 if you step onto somebody's land, you have trespassed on that
17 land, even if you don't know or don't see some no trespassing
18 signs. You still don't have permission to be on that land.

19 Let's talk about the next issue in this case which is the
20 issue of validity. Now, this the Defendants' defense. This
21 is something they have to prove. And with respect to the
22 issue of validity, what I expect to -- what I expect the
23 argument to be in this case is that, you know, even if we, the
24 Defendants, infringe these patents, that's okay because these
25 patents are not valid and never should have been issued by the

1 Patent Office.

2 In other words, in this case the Defendants I think will
3 argue to you that the Patent Office made a serious mistake in
4 reviewing Finesse's patents because other people out there had
5 invented these inventions before Finesse did. That's going to
6 be their argument.

7 Now, with respect to that argument, there's something
8 important to remember, and that is, the United States Patent
9 and Trademark Office has issued Finesse these patents.
10 Because they are duly issued patents, they are entitled to
11 what is known as the presumption of validity. That means that
12 in order to invalidate Mr. Smith's patents, Defendants have to
13 come to you with something known as clear and convincing
14 evidence of invalidity. And so I should note it is a higher
15 burden of proof on Defendants to invalidate Finesse's patents
16 than the burden of proof for Finesse to show infringement.

17 Now, do you remember earlier when I told you that one of
18 Mr. Smith's commercial problems when he first tried to start
19 selling his inventions was that he was ahead of his time.
20 Well, that may have been a commercial problem for him back in
21 2001, 2002, but we expect the evidence to show that it will be
22 an even bigger problem for Defendants when they try to
23 establish invalidity.

24 Because Mr. Smith was so far ahead of his time, the
25 Defendants are not going to be able to point to one person out

1 there who had actually developed Mr. Smith's invention ahead
2 of Mr. Smith. Instead, what they're going to do is they are
3 going to take one part of one person's invention and then
4 another part of another person's invention or their journal
5 article or something, smash them together and say, voila,
6 there is Mr. Smith's invention. That is a defense called
7 obviousness.

8 I will let the Defendants explain that all to you, but
9 suffice it to say we don't think they're going to have clear
10 and convincing proof that Finesse's patents are invalid, which
11 brings us to a third issue in this case. Now, we think that
12 the evidence in this case will compel you to conclude that
13 Finesse's patents are infringed and invalid [sic]. And when
14 they do, when that evidence does, Finesse will be entitled to
15 what is known as a reasonable royalty as damages.

16 Now, what is a reasonable royalty? Well, it's kind of
17 like if an oil company, with permission, comes onto your land
18 and starts drilling, then they owe you a royalty for every
19 barrel of oil they take off your land. The statute in the
20 United States that sets up patent damages says that when you
21 find infringement and validity, then the inventor, the
22 patentholder, is entitled to a reasonable royalty for the use
23 made of the invention by the infringer. And that is each and
24 every use.

25 So, for example, if an oil company comes on your land and

1 takes barrels of oil off your land, they have to pay you a
2 royalty on each and every one of those barrels even if you
3 know they don't actually make a profit on that oil. Same deal
4 here--we will argue that AT&T needs to pay a royalty on each
5 and every Nokia radio that it uses with this PIM-C feature.

6 Now, to help you understand what that reasonable royalty
7 is, we will be presenting the testimony of an expert witness
8 on damages, Dr. Coleman Bazelon, who is also back there in the
9 audience today.

10 Doctor Bazelon is one of the foremost experts in the
11 United States on the issue of wireless economics. He's
12 published articles on the subject, he's testified to the U.S.
13 Senate, testified to the Federal Communications Commission.
14 He's even himself participated in spectrum options.

15 And what Doctor Bazelon did is create a model that
16 considers what would AT&T and Finesse have agreed to as
17 reasonable compensation for Finesse's inventions back in 2018.
18 Where does 2018 come from? Well, you will hear that the law
19 requires you, in considering damages, to think about what AT&T
20 and Finesse would have agreed to back in 2018 right before
21 infringement started. So infringement started in 2018.
22 That's when we start to think about what this negotiation
23 would have been like.

24 And Doctor Bazelon's analysis and his model considers
25 what would AT&T have been thinking back then, what would AT&T

1 have considered to be the value of this spectrum that
2 Finesse's inventions are allowing AT&T to use much more
3 efficiently.

4 THE COURT: Two minutes remaining, counsel.

5 MR. GRINSTEIN: Now, of course, to understand what
6 that value is, you first have to understand how valuable
7 spectrum is in the first place. And that's why we will expect
8 to show evidence like PX 518, which shows that the wireless
9 companies out there have spent as much as \$44 billion bidding
10 on spectrum. So taking that into account, Doctor Bazelon will
11 testify that a reasonable royalty for the infringement of
12 Finesse's patents through today at trial is about \$58 million.
13 And if you take that royalty forward into the future, it grows
14 to about \$166 million through the life of the patent.

15 Now, Defendants are going to have their own damages
16 expert, a gentleman by the name of Dr. Stephen Becker. Doctor
17 Becker is going to testify that damages are only about a
18 million dollars. We'll have our own issues with Doctor
19 Becker's analysis. We'll hash that out with him on cross
20 examination.

21 So thank you, ladies and gentlemen of the jury. Thank
22 you for your time and your attention today. Thank you, of
23 course, for your jury service.

24 Like I said before, we believe that Mr. Smith was ahead
25 of his time with his PIM-C inventions. He was so ahead of his

1 time that now the Defendants have caught up and recognized his
2 foresight. He may have been ahead of his time back then, but
3 now is the time for him to get the respect and compensation
4 that he has earned.

5 Thank you.

6 THE COURT: Defendants may present their opening
7 statement to the jury. Would you like a warning on your time,
8 counsel?

9 MR. DACUS: Yes, Your Honor. If you would let me
10 know when I have five minutes left, please.

11 THE COURT: I will warn you when you have five
12 minutes remaining. Please proceed with opening statement.

13 MR. DACUS: Thank you very much.

14 Good afternoon. Let me start this afternoon where I
15 started this morning and that is to say, on behalf of the men
16 and women who work at Nokia and AT&T, a very sincere thanks to
17 you. It was one thing to say thanks this morning when you're
18 talking about a couple of hours of your time. It's a
19 different thing to say thanks when we're talking about a week
20 of your time.

21 I told you this morning that we would not be here if this
22 case was not important to AT&T and Nokia, and it is important
23 and I want to give you a glimpse of why. You may be sitting
24 there thinking that because AT&T and Nokia have been sued in a
25 federal courthouse for patent infringement, that they are mad

1 at or do not respect the Patent Office and the patent system.
2 In fact, the Plaintiff's lawyer just told you expressly
3 straight up that he wants you to believe that we do not
4 respect the patent system.

5 I know the very first thing these people would want me to
6 say to you is nothing could be further from the truth. In
7 fact, the truth is 180 degrees opposite and here is why. Both
8 of these companies have been absolute innovators in
9 telecommunications for the better part of a century, the
10 better part of a century. Combined, they themselves have
11 thousands of patents, thousands of patents. So the integrity
12 of the U.S. patent system and respect of the U.S. patent
13 system is of the utmost importance to them, and that's why
14 we're here.

15 They'll tell you very quickly that folks who have real
16 legitimate inventions that other people are using, they're
17 entitled to fair compensation, but folks who come to the
18 courthouse without valid claims and point fingers and claims
19 of infringement that are unfounded and not valid in an attempt
20 to get a windfall, you need to stand up and defend yourself,
21 just like we talked about this morning, and that's really what
22 brings us here.

23 You know from what the Judge said this morning, what the
24 video you heard last Friday, that when you're accused of
25 infringement, you have to turn to a jury for help, and if we

1 were just speaking in short terms, that's why we're here is
2 for your help. The way we ask for your help is to ask you to
3 answer three questions that the Judge has already told you
4 about--the question of infringement, the question of whether
5 or not these patents are invalid, and the question of whether
6 or not there is any reasonable money due to these folks.

7 The Judge just spent, by my count, well over 30 minutes
8 us reading instructions to you about how you view the
9 evidence. You knew before you came in that door this morning
10 that the way you answer those questions is through the
11 evidence.

12 The thing I want to emphasize to you and spend just a
13 couple of minutes talking about is the evidence in this case
14 that you're going to hear many times is going to be like two
15 ships passing in the night. It just is. The Judge has told
16 you, and he spent many minutes talking about credibility, and
17 I was listening closely because that is what you're going to
18 have to judge--the credibility, the believability, which
19 version sounds right, which version sounds wrong, because
20 there are going to be two versions.

21 Now, a lot of times when we talk about credibility,
22 people instantly think, oh, one side or the other must have
23 bad motive or bad intent. That can be the case, but it's not
24 necessarily the case. A lot of times you wind up with two
25 versions because folks have two different perspectives and two

1 different sets of information available to them.

2 And so I want to give you just a road map of what I think
3 you'll hear in this case and something that I want you to view
4 the evidence through the lens of as you hear the evidence.

5 So at this table sits Finesse and Mr. Smith. Their
6 perspective is they want you to believe that they have this
7 invention that is very important to these telecommunications
8 companies and that is worth a whole lot of money. They're
9 certainly not the first inventor to want a whole lot of money
10 or to believe sincerely their invention is important. The
11 fact is there is over 10 million patents in the United States.
12 Very few of them are worth any, if much, money.

13 Also at the Finesse table sits Mr. Smith who, no personal
14 criticism to him, but he's not worked at telecom service
15 providers like AT&T, Verizon, T-Mobile, and Sprint. So he
16 believes that he understands and knows about this internal PIM
17 issue and to what extent it is a problem.

18 He also and his lawyers believe and they'll try to
19 convince you how AT&T takes care of that problem. And I'm
20 going to tell you that that's going to be part of the two
21 ships passing in the night. At the end of the day, the paper
22 solution that Finesse and Mr. Smith put down on paper that
23 they got a patent on is a theoretical way to correct a
24 problem.

25 I listened closely and Mr. Grinstein said that Mr. Smith

1 came up with the first effective way of PIM cancellation. I'm
2 telling you that's not the case. And you may say, well, of
3 course you are, you're the AT&T lawyer. But what I'm going to
4 ask you to listen for during the course of this case is the
5 evidence because I think the proof is in the pudding and
6 they -- they touched on it just a bit.

7 And here's what the proof is. Finesse has never made a
8 product using this patented invention. They've been in
9 existence over 20 years. They've told you how important it
10 is, how effective it is. They've never made a product using
11 it.

12 In addition to that, as they admitted, they've been
13 to -- they put four or five people on that slide that they had
14 gone to and attempted to partner with, attempted to get them
15 to take a license to this patent. I think Mr. Smith will
16 testify he's been to more people than he can remember, more
17 companies than he can remember, and each one of those folks
18 from 2001 through today, so it's not just the issue if he was
19 ahead of his time, all the way through today, all of those
20 folks have said, thanks but no thanks.

21 And I would submit to you the reason they've said that is
22 because the solution in that patent, to the extent there is
23 one, was a theoretical rather than a practical solution that
24 could be used by these telecom companies.

25 Now, the perspective of AT&T and Nokia is much different.

1 AT&T sits here with a bird's eye view of this internal PIM.
2 I'm not going to call it passive intermodulation. I'm just
3 going to call it PIM. They know exactly whether and to what
4 extent that is an issue and is a problem, and I'm going to
5 tell you and the evidence is going to show you that in the
6 grand scheme of things, internal PIM, and we're going to talk
7 about what that means because there's a distinction between
8 internal and external and it's very important, internal PIM is
9 just not a big problem for them. It's present in
10 substantially less than two percent of the cell towers and
11 radios that are deployed by AT&T.

12 When it is present--I'm not telling you it's never
13 present; I'm telling you it's very rarely present--they need a
14 cost effective and practical means to reduce and prevent that
15 internal PIM. And, overwhelmingly, the way they do it, Mr.
16 Loddeke and another engineer will testify about it, is they
17 simply repair it. They do this thing called hygiene. You saw
18 that slide where the gentleman was climbing the tower, making
19 repairs. They send a repairman out there. Overwhelmingly,
20 that's how they fix this problem.

21 At times this PIM cancellation process, they do utilize
22 it. It's very rare, but it is utilized in the Nokia radios.
23 But what you're going to learn is the Nokia radios that have
24 the PIM cancellation operate in a different way than what the
25 patent describes, and the reason they operate in a different

1 way goes back to this theoretical solution versus practical
2 solution.

3 Now, let me dig into the details a bit. I don't really
4 need to spend any time talking to you about AT&T. Everyone
5 raised their hand this morning. You know AT&T's one of the
6 leading telecommunications companies in the country, they have
7 some of the best and brightest engineers in the country, and
8 have for the better part of a century.

9 Nokia, you may have heard about Nokia, you may not have
10 heard about Nokia. Nokia is a company with its U.S.
11 headquarters in Dallas. Nokia makes the equipment in this
12 case, the radios that go on cell towers, but they make a lot
13 of equipment that goes in these cellular networks. They have
14 innovation centers across the country where they do research
15 and development. They have the best and brightest engineers
16 who do nothing but work hard and devote their lives to
17 telecommunications and the products that they develop.

18 I'm going to show you this slide. And I'm not going to
19 belabor it, but if we were to draw or to chart out sort of a
20 family history or a genealogy of Nokia, within the Nokia
21 organization you would find companies like Bell Laboratories,
22 Lucent Technologies, Alcatel-Lucent, literally all the way
23 back to Alexander Graham Bell. And what you would know is
24 those companies, in combination, are responsible for the
25 transistor, the laser, new inventions related to satellite

1 communications, all the way through cellular communications.

2 Bell Labs. The work at Bell Labs, the people at Bell
3 Labs have received nine Nobel prizes for their work from Bell
4 Labs. So these are folks who spend their life devoted to
5 telecommunications devoted to research and development and
6 devoted to making and bringing folks better products.

7 Let's talk about what is at issue here, and that is the
8 passive PIM intermodulation. I was very glad to see the
9 Plaintiff's lawyer to say to you that Mr. Smith did not
10 discover PIM. He did not discover that, nor did he invent PIM
11 cancellation or the first method of PIM cancellation. So
12 let's talk about PIM. And I want to spend a moment on this
13 internal versus external, and I'm going to go slowly here
14 because I think this is very important in the case and I think
15 it's a part that sometimes gets confused.

16 So there are two kinds of PIM--external and internal.
17 External is also known as air PIM, and external is created by
18 objects that are outside of the cell tower. So what you see
19 here on the left is a picture of a cell site on top of a
20 building. That's where those sites are often located in large
21 towns or cities. And what we have circled there is an air
22 conditioner, and that air conditioner can create interference
23 with the cellular signal. That is external to the cell tower
24 or the cell site. That's why we call it external.

25 What you're going to learn from the testimony in this

1 case is external PIM is hard to find and locate, and it's very
2 difficult to cure, and it's very expensive to cure.

3 On the other hand, internal PIM is interference that
4 occurs within the line on the actual radio cell tower or cell
5 site. Somewhere between, it can occur between the antenna and
6 the radio itself. What we've circled here, there are
7 connectors for those wires. Those connectors can become
8 loose, they can become rusted. Internal PIM is much, much
9 easier to identify, much cheaper to solve, much easier
10 problem.

11 Here's why I say it's important. You're going to see
12 lots of documents in this case that refer to PIM. They're
13 just going to say PIM. You've already actually seen some,
14 either intentionally or unintentionally. The Plaintiffs in
15 this case do not always distinguish between external and
16 internal. This case is only about internal PIM.

17 So what I would ask you to do is any time you see in a
18 document the word PIM, I would ask that you have an alarm bell
19 go off in your head and you would instantly say, hey, I need
20 to know if we're talking about external or internal. I wish I
21 had an alarm at my table I could sound because this is going
22 to happen. I can guarantee you. It's already happened. So
23 any time we're talking about PIM, we need to know if we're
24 talking about internal or external.

25 Here's another -- here's why that matters. I told you

1 that external is difficult to find, difficult to solve,
2 expensive to solve. Internal, much less so. You're going to
3 see documents, and you don't -- I'm not going read through all
4 this and you don't need to right now. You're going to see
5 this document in the course of the evidence, and you'll see
6 that AT&T has very prescribed procedures for how they deal
7 with PIM, both internal and external.

8 And for internal PIM, they find it and fix it. If
9 there's interference they go find the source of the
10 interference and they repair it. They do what's called
11 hygiene or maintenance. It's like personal hygiene, but
12 they're doing hygiene on the line. That's how they -- in the
13 overwhelming majority of cases, that's how they fix it, not
14 with PIM cancellation that's in the radio.

15 In addition, Mr. Loddeke will explain to you, they have
16 the ability if they have internal PIM to simply lock down or
17 turn off some of the receivers on the cell tower. And they
18 can do that without degrading or affecting the cell signal
19 that's coming from that a specific location.

20 Now, there are times when the radios that contain the
21 PIM-C function, there are times that that actually cancels the
22 internal PIM. It's rare, it's very rare, but it -- I'm not
23 going to tell you it doesn't happen. It does happen at times.

24 This is an internal document from Nokia related to those
25 radios, and all I want to show you here is this emphasizes and

1 reiterates the fact that these radios do not relate to
2 external PIM. You see it says, it does not reduce PIM that is
3 created outside the radio frequency connector, cable, or
4 antenna. So the only thing at issue in this case is internal
5 PIM.

6 So the question becomes for these radios that have the
7 PIM-C or the PIM cancellation, do they do it the same way that
8 the patent describes. That's the question of infringement.
9 Right?

10 I'm confident that before you came to this courthouse
11 today, you've probably never done an infringement analysis,
12 you've probably never compared a product to a patent. So I
13 want to spend just a couple of minutes walking through that
14 process.

15 All three of these questions that you're going to answer
16 are for you to answer. I'll tell you that, from our table,
17 the way we view this is our job is to the best of our ability
18 to bring you the evidence as best we can, not to tell you how
19 to answer these questions. You know how we think they should
20 be answered. But to give you the evidence so that you can
21 make a decision.

22 So for infringement, the Judge has told you, a patent is
23 infringed if the accused product, that's the radio here,
24 includes each and every element in the patent claim. You
25 remember the patent claim is the words that actually define

1 what the alleged invention is.

2 And I'll give you an example and I'll admit it's kind of
3 a simple example. It's an example that someone gave me of how
4 this analysis should be conducted. The reason I give it to
5 you is so that, as you hear the evidence from the stand, you
6 kind of know how to put this puzzle together.

7 So assume that someone had a patent on a soccer ball and
8 the patent said it's made of leather stitched together, filled
9 with air, and round in shape. And assume that that
10 patentowner of the soccer ball patent sued a football maker.
11 The football maker would come to Court and say, yeah, my
12 football is made of leather stitched together, filled with
13 air, but it's oblong in shape, oblong versus round. Only one
14 word missing from the claim.

15 But as the Court just instructed you, that means there is
16 no infringement. If there's one word or one element missing
17 from the claim, then there is no infringement. And that makes
18 sense. A football is very different from a soccer ball.
19 That's how the process works.

20 So how does it work in this case? I want to walk you
21 through at a high level how, the evidence you're going to
22 hear. So let's look at the '134 Patent. Let me say this up
23 front. Jim Proctor is one of the country's leading experts in
24 this area. Nokia and AT&T retained him in this case to look
25 at this infringement issue. He's done an analysis. He's

1 going to come present that to you from the witness stand.

2 Here's an excerpt from the patent, not the claim yet,
3 just the abstract describing the invention, and what Mr. Smith
4 said the purpose was was for a receiver described herein that
5 samples the entire band in which there can be signals of
6 interest or signals that can generate interference. And then
7 the last sentence says, those isolated interfering signals are
8 then canceled out.

9 What we want to focus on are the signals that can
10 generate interference. That's what his theoretical solution
11 was--sample the band, find the signals that can generate
12 interference. That's the theoretical solution.

13 I'm going to tell you that in practice, Nokia and AT&T
14 don't need to go find those interference generating signals.
15 They know within which transmission channel they're
16 transmitting because they're transmitting the phones. They
17 know exactly where those signals lie. As a practical matter
18 they don't need to go find a passband of receive signals that
19 includes both a received signal of interest and interference
20 generating signal.

21 This just highlights that point. If you look at the
22 claim, it says you must receive a passband of received signals
23 including both, and we don't do both because we don't have a
24 practical need to do both, nor from a practical matter could
25 we do both. These are things that operate, and what I'm going

1 to say is not a misnomer, at millions of times a second is
2 what these things are being processed at. And as a practical
3 matter, Mr. Smith's application and patent wouldn't work as a
4 practical matter.

5 Now, I told you that Mr. Proctor's going to testify to
6 you from the witness stand. Here's one thing I would -- I'll
7 just suggest to you, certainly not mandating. The Court's
8 told you that you can take notes. I would recommend to you
9 that when Mr. Proctor is testifying, you have the patents, he
10 is going to go through all these words in the patent and he's
11 going to show you which ones are not met or which ones are
12 missing. If you agree with him, you can just put a little X
13 out beside that word or that element that's missing.

14 The reason I suggest that to you is you're going to hear
15 about many claims and many words. When you go back in the
16 jury room, you can simply look at your -- your notebook, and
17 if you have one X on a claim, you know that that means we do
18 not infringe. You may have more than one X. But if you have
19 at least one, you know we don't infringe.

20 This same claim, this is claim 1 from the '134 Patent,
21 it's a method, it also requires performing phase and amplitude
22 adjustment--that's just the waves, that's characteristics of
23 the wave--in a closed loop manner. It's very clear how that
24 should occur. I'm not going to attempt to explain what a
25 closed loop manner is. Mr. Proctor will, and he'll also

1 explain to you why we don't do it in that manner and why, as a
2 practical matter, it just simply -- it wouldn't work if we
3 did.

4 Let's look at the '775 Patent. The '775 Patent talks
5 about a very specific way for creating interference canceling
6 signals. So if you go look at claim 1 of that patent, it
7 says, a method for performing interference cancellation. And
8 then let's go down to the highlighted part and it tells you
9 very specifically how that has to occur in the patent. It
10 says, it includes--ICS is interference canceling
11 signals--giving three signals, and then there is certain math
12 that has to be done on those three signals. And that's what
13 you're going to learn from Mr. Proctor is the Nokia products
14 don't have three signals.

15 The Court's given you a construction here, and I want to
16 be very clear, what the Court says is, the three signals must
17 be separately identifiable but are not limited to three unique
18 input signals. The evidence will be that there are not three
19 separately identifiable signals and, as a result, that math
20 that is required by the claim is not done, cannot be done, and
21 again it goes back to the practical versus the theoretical.

22 That's a roadmap of what I think you'll hear on
23 infringement. Just like the Plaintiffs, when Mr. Proctor
24 testifies, he's very likely to testify for a couple of hours.
25 He's going to give you the kind of detail that you need to

1 make an infringement decision. And I'll tell you up front,
2 it's probably going to be more detailed than you want, but
3 that's -- that's what we think we should do. We should give
4 you all the information that you need to make an informed
5 decision on that infringement question.

6 Let me turn to the question of invalidity. We talked a
7 little bit about it this morning. You now know from what the
8 Court has said to you that the ultimate determination for
9 invalidity of a patent is made by a jury. It's not made by
10 the Patent Office.

11 And that's for a very good reason. The Patent Office
12 doesn't have all the information that you have. The patent
13 process is a process where the applicant and the Patent Office
14 meet and talk and communicate. No one else is a part of this
15 process. We don't have the opportunity to show up in that
16 process and say, hey, what about this or look at this. No one
17 else does. That's why the jury makes the ultimate
18 determination.

19 And the evidence -- I think -- I heard Mr. Grinstein say
20 we are going to try to convince you that the Patent Office has
21 made a serious mistake. That's not true. That's not what
22 we're going to do. What we're going to do is say the Patent
23 Office did not have all the information.

24 And you remember when we talked in jury selection this
25 morning, we said, has anyone ever made a decision and it was

1 wrong because you didn't have all the information that you
2 needed? Everyone's done that. We're not saying these folks
3 made a mistake. We're saying they didn't have all the
4 information that they need, they didn't have near the evidence
5 that you're going to have to make this decision, and once you
6 have all the available information, the fact is these things
7 that Mr. Smith put in his patent, they're not new. They are
8 not new solutions. And that's really the test. Right?

9 You know from the video you heard and from what the Court
10 said, in order to have a valid patent, your solution and your
11 concept has to be new, and if others had it before you, even
12 if you combine things together such that they would be
13 obvious, then your patent is not valid.

14 THE COURT: Five minutes remaining.

15 MR. DACUS: Thank you, Your Honor.

16 I just want to -- again, Mr. Proctor is going to talk to
17 you in detail. I want to give you a high-level roadmap of
18 what I think you'll hear.

19 So what you see on the screen is a patent by a gentleman
20 by the name of Kim. So it's not one of the patents in this
21 case. It's a valid United States patent. The thing I want to
22 emphasize to you is you see when it was filed? December 29th
23 of 1998. That's before either one of the two patents in this
24 case came to be or were filed.

25 And what this patent deals with by Mr. Kim, you see it on

1 the bottom, intermodulation product signals are eliminated.
2 Now, they use the word 'eliminated' rather than canceled. But
3 here we are with the same solution that Mr. Smith claims in
4 his '134 Patent, and it's before his patent was applied for.

5 The same is true for the '775. Here is a patent by a
6 gentleman by the name of McCalister. Look at the date,
7 January of 2007. That is before this '775 Patent. This
8 McCalister patent deals specifically with how to create
9 intermodulation products. That's canceling signals. And it
10 does it in a very specific way with specific math, and we'll
11 show you that essentially this is how the Nokia products work.
12 And the point of emphasis here, the thing I want you to watch
13 for is, I've already told you that these folks are going to
14 try to stretch that '775 Patent. We really have two signals.
15 They're going to try to convince you that our two signals are
16 three. They're really trying to stretch their patent beyond
17 what it is. And if they are successful in doing that, then
18 this McCalister patent describes exactly how they want to
19 stretch their patent and they can't have it both ways. It's
20 either we don't infringe or this patent is invalid.

21 I'll close with this. I'll say just a short word about
22 damages and the amount of money they want. I don't want to
23 talk about damages because we don't believe that we owe them
24 anything. But this is what I will say about damages. They've
25 told you what they think this case is about, but you can learn

1 a lot about what a case is truly about if you look at the
2 amount of money that folks ask for and if you listen to the
3 methodology and the process they go to in order to try to get
4 to a calculation on that amount of money.

5 So what I would ask you to do is when they put up their
6 expert to talk about how to calculate this, please listen
7 closely to the methods and the process that he uses and goes
8 through to get to that amount because we do think that bears
9 not only on the credibility of the damage claim but the
10 credibility of the claim in general here.

11 I want to thank you very much for your attention this
12 afternoon. We very much look forward to the opportunity to
13 present the evidence to you over the course of the next week
14 and appreciate your attention. I do want to remind you before
15 I sit down, we will go second, so please don't make any
16 determination until you hear all the evidence.

17 Thank you.

18 Thank you, Your Honor.

19 THE COURT: Ladies and gentlemen, before we proceed
20 with the Plaintiff's case in chief and call their first
21 witness, we're going to take a short recess. This first
22 witness is going to be close to two hours on the witness
23 stand, so this is our chance to stretch our legs and get a
24 drink of water before we start with a lengthy witness.

25 If you will simply take your notebooks and close them and

1 leave them in your chairs, I don't expect this to be a long
2 recess, and we'll be back shortly to continue and, as I say,
3 begin with the Plaintiff's first witness.

4 Please follow all my instructions, including not to
5 discuss the case with each other, and we'll be back shortly.

6 The jury's excused for recess.

7 (Whereupon, the jury left the courtroom.)

8 THE COURT: Be seated, please.

9 Mr. Nelson, could you point out to me Nokia's corporate
10 representative who's here at trial to represent that entity?

11 MR. NELSON: We don't have a corporate
12 representative. We will have a witness testifying, Your
13 Honor, but we don't have a corporate --

14 THE COURT: Nokia's intervened in this case. They
15 asked to participate. They're going to participate in the
16 trial. We need someone that is the face and the physical
17 presence of that entity.

18 MR. NELSON: We'll have a witness, Mr. Davis. He
19 will testify, but --

20 THE COURT: We need a corporate representative for
21 each party participating in the trial throughout the trial.

22 MR. NELSON: He'll be here tomorrow, Your Honor. He
23 actually is not coming into town until tonight, and that's --
24 that's the issue, Your Honor.

25 THE COURT: Okay. Well, as we all know,

1 corporations don't exist in corporeal form. They're
2 represented by human beings, and your client needs to be
3 represented by a human being at the counsel table during the
4 trial.

5 MR. NELSON: Understood, Your Honor.

6 THE COURT: All right. We'll take about a 10-minute
7 recess, and then we'll continue.

8 Court stands in recess.

9 (Brief recess.)

10 THE COURT: Be seated, please.

11 Plaintiff, are you prepared to call your first witness?

12 MR. WARD: We are, Your Honor. We would like to
13 invoke the Rule as well. If you want us to do it in front of
14 the jury --

15 THE COURT: I'll ask you as soon as the jury's back
16 in the room.

17 MR. WARD: Okay. We're good.

18 THE COURT: Let's bring in the jury, Mr. Mitchell.

19 (Whereupon, the jury entered the courtroom.)

20 THE COURT: Please be seated.

21 Counsel, does either party wish to invoke the Rule?

22 MR. WARD: The Plaintiff does, Your Honor.

23 THE COURT: All right. Do I understand that the
24 request is to invoke the Rule as to fact witnesses but not
25 expert witnesses?

1 MR. WARD: Correct, Your Honor.

2 THE COURT: All right. That means if you are
3 present in the courtroom and are not a designated expert
4 witness and you are not a designated corporate representative
5 but you intend to testify in this case, you must wait outside
6 the courtroom until you are called to the witness stand to
7 testify.

8 And, counsel, I will rely on you to make sure anyone
9 subject to the Rule complies and doesn't somehow remain in the
10 courtroom. The Rule is invoked.

11 Plaintiff, call your first witness.

12 MS. XI: Good afternoon, Your Honor. Meng Xi for
13 Finesse. Plaintiff calls Francis Smith.

14 THE COURT: All right. Come forward and be sworn,
15 Mr. Smith.

16 (Whereupon, the oath was administered by the Clerk.)

17 THE COURT: Please come around, have a seat on the
18 witness stand, sir.

19 Are there witness binders to distribute in regard to
20 direct examination?

21 MS. XI: Yes, sir. They should be with you already,
22 with the witness, and I just with distributed two copies to
23 the Defendants.

24 THE COURT: All right. Then let's proceed with
25 direct examination.

1 MS. XI: Thank you.

2 FRANCIS "FRANK" SMITH, SWORN,
3 testified under oath as follows:

4 DIRECT EXAMINATION

5 By Ms. Xi:

6 Q. Sir, could you please state your name for the jury?

7 A. My name is Francis Smith. I go by Frank.

8 Q. And where do you live, Mr. Smith?

9 A. I live in Park City, Utah.

10 Q. What is your relationship to the Plaintiff in this case,
11 Finesse Wireless?

12 A. I am the founder, CEO, and the inventor of the
13 inventions.

14 Q. Are you married?

15 A. Yes, I am, to my wife of -- Shelly of 30 years.

16 Q. Do you have any kids?

17 A. Yes. I have two sons, Raymond and Cody.

18 Q. And when you're not in court testifying, what do you like
19 to do for fun?

20 A. Gardening with my son, running to stay in shape,
21 backpacking, and fishing with my sons.

22 Q. How old are you, Mr. Smith?

23 A. I'll be 69 this coming Saturday.

24 Q. Are you aware that Finesse is accusing AT&T and Nokia of
25 infringing two patents in this lawsuit?

1 A. Yes, I am.

2 Q. And what do you have to do with those two patents?

3 A. I am the inventor on both.

4 Q. Where did you grow up, Mr. Smith?

5 A. I grew up in Denver, Colorado.

6 Q. And please tell the jury how you discovered that you
7 would become an engineer.

8 A. I had the good fortune in high school of having a
9 wonderful math teacher in my sophomore year. He was a
10 licensed civil engineer who was dedicated to teaching when he
11 wasn't doing civil engineering. And every time he taught us a
12 mathematics technique or something of that nature, he would
13 tell us how we could really use it in real life. And I found
14 using those tools to solve problems in an extremely
15 interesting way to go about doing things.

16 And he even got myself and several others involved in a
17 bridge building contest with the Colorado State Transportation
18 organization where we build bridges out of balsa wood and they
19 would put them under a press and see who could hold the most
20 weight.

21 Q. Did you win that competition?

22 A. Not even close.

23 Q. So your high school math teacher inspired you to study
24 engineering?

25 A. Yes, he did.

1 Q. Where did you go to college?

2 A. I went to the Colorado School of Mines in Golden,
3 Colorado.

4 Q. Did you graduate with a degree?

5 A. Yes, I did.

6 Q. What is it?

7 A. I got a Bachelor's of Science degree in geophysical
8 engineering.

9 Q. And could you explain to the jury what is geophysical
10 engineering?

11 A. Geophysical engineering is studying and measurement of
12 the properties of the earth, electromagnetics, gravity
13 density, things of that nature, to search for oil, search for
14 minerals, do earthquake prediction, all the different things
15 that are involved with the physical properties of the earth.

16 Q. What did you do after you graduated?

17 A. After I graduated, I was commissioned a second lieutenant
18 in the Army Corps of Engineers, and I was then stationed in
19 Fort Shafter, Hawaii.

20 Q. What was your rank and what did you do while you were in
21 the Army?

22 A. I was commissioned as second lieutenant and worked my way
23 up to captain four years later.

24 Q. Okay. What were your assignments in the Army?

25 A. My first assignment was executive officer of a photo

1 mapping company, and my second assignment was to develop and
2 build from scratch a theater level geographical intelligence
3 unit to support our ground troops.

4 Q. How large was the mapping company and what did it do?

5 A. The mapping company was about 100 soldiers, the training
6 unit was about 20. The mapping unit created specialized maps
7 that the soldiers could use to very quickly assess what they
8 were going to see on the ground.

9 Q. How long did you serve in the Army?

10 A. I served in the Army for four years, including my
11 training at Fort Belvoir, Virginia, through -- when I came off
12 active duty as a captain.

13 Q. And did you continue with your service after active duty?

14 A. Yes, I did. I stayed in the Ready Reserve for about five
15 years.

16 Q. Did you win any praise or accolades while you were in the
17 Army?

18 A. Yes. I was very fortunate for the development of the
19 theater training intelligence unit, I was awarded the Army
20 Officer of the Year in 1979 for the Western Command.

21 Q. What did you do after you left the Army?

22 A. After the Army, I went to work in industry for several
23 different defense companies where I was in the process of
24 working on developing intelligence and communication systems
25 in support of our soldiers.

1 Q. What are the names of some of these companies that you
2 worked for?

3 A. I worked for TRW, which NATO later became Northrup
4 Grumman. I worked for Ford Aerospace, which eventually
5 involved in being Lockheed Martin. GTE Government Systems and
6 Lucent and then L-3 Communications in Salt Lake City.

7 Q. Lucent, is that the Lucent Technology that has gone
8 through several name changes over the years?

9 A. Yes, I believe it has. I think it became Alcatel-lucent
10 and then Nokia.

11 Q. When did you start working with radio and cellular
12 communication systems?

13 A. When I got out of the Army in 1981, went to work for TRW
14 for about a year. And then for Ford aerospace, I was dealing
15 in satellite communications which, of course, are wireless,
16 and other terrestrial microwave system.

17 Q. Were there cell phones back in 1981?

18 A. I don't remember having them available at that time. I
19 think they came in later with the original analog and then
20 digital later.

21 Q. Did you do any graduate study?

22 A. I did. I got a -- when I got to Ford Aerospace and
23 looked around and saw satellite communications and
24 communications in general, I decided the future was in
25 communications. And so I enrolled at the University of Santa

1 Clara in a master's electrical engineering program
2 specializing in RF communications.

3 Q. What is RF communications?

4 A. RF is radio frequency. So they are the -- you know, the
5 radio signals you get on your radio or you get on your cell
6 phone now, or you get on your TV, those are all RF, radio
7 frequency.

8 Q. Did you find out your service in the Army was valuable to
9 your work at these defense contractor firms?

10 A. Oh, it was extremely valuable. Four years as a company
11 grade officer leading troops, taking care of the troops,
12 translated into management very easily in industry, plus a
13 knowledge of how the military units worked and what their
14 needs were when we came to developing intelligence
15 communication systems, I could see the applications of it
16 directly and that was rather rewarding.

17 Q. What was the last company that you worked for before you
18 started Finesse?

19 A. The company called Parker Vision Wireless.

20 Q. What did Parker Vision do?

21 A. Parker Vision was trying to develop chipsets for handsets
22 for cellular.

23 Q. When did you leave Parker Vision?

24 A. January of 2001.

25 Q. Why did you leave Parker Vision?

1 A. I got -- I got let go. The man that I was working for
2 that hired me got crosswise with management, and unfortunately
3 a few more of us were let go shortly thereafter.

4 Q. Did management ever tell you why you were let go of?

5 A. They told me I was being let go for violation of company
6 policy. They wouldn't tell me what policy I violated.

7 Q. What were you hoping to do with Finesse?

8 A. Once I started Finesse after I left Parker Vision, I was
9 familiar with the intermod problems in cellular and other
10 communication systems. As I found it a rather intriguing
11 problem because it was fairly complex, much more than just a
12 signal getting in the way. And I was trying to find good ways
13 to filter it without doing damage to the desired signal that I
14 was looking for, and eventually came up with intermod
15 cancellation in a different paradigm.

16 Q. And how long did you devote your life to Finesse full
17 time?

18 A. I did it from about 2001 to 2004 when my life savings ran
19 out and I had to get another job to support my family.

20 Q. So what happened after the three years with Finesse?

21 A. I went to work for L-3 Communications in Salt Lake City,
22 a defense contractor who developed communication systems for
23 the military, air-to-air, air-to-ground, ground-to-ground,
24 air-to-satellite--all the different types of communications
25 that our troops needed to be safe and get their job done.

1 Q. And how long were you at L-3?

2 A. I was there from 2004 to 2020 when I retired, so about 16
3 years.

4 Q. Did Finesse disappear once you were working at L-3 for 16
5 years?

6 A. No. We were still working on it in the background,
7 continuing to look for investors and whatnot. But I couldn't
8 do it full time because I had my responsibilities to my
9 primary employer.

10 Q. Have you worked since your retirement?

11 A. Yes, I have. I've been more focused on Finesse since I
12 now have time to put more time into it, and I started a
13 consulting company called Blue Spruce Consulting where I do
14 consulting for different companies in telecommunications,
15 mostly satellite.

16 Q. And what kind of clients do you have for Blue Spruce?

17 A. I have several different clients. Some of them are
18 defense contractors.

19 Q. And what kind of work did you bring them?

20 A. The only thing I can go into is that I do mostly
21 satellite communications, but most of it's classified due to
22 the nature of my customers.

23 Q. If it's -- by classified, do you mean that you hold a
24 security clearance?

25 A. Yes. I hold a top secret clearance, plus special access

1 clearances and have an extended background in investigation.

2 Q. Are those clearances easy to get?

3 A. They take time and they are difficult and they require
4 extensive background investigation, will typically take at
5 least a year to get and sometimes involve polygraphs.

6 Q. Have you won any awards for your work in industry?

7 A. My team at L-3 was inducted into the Space Technology
8 Hall of Fame for new development of algorithms to put
9 non-linear processing into amplifiers with NASA Glenn where
10 they could put up to 20 gigabits per second through this
11 amplifier. Think about that in terms of your internet is
12 normally one gigabit. It would be 20 times faster than that
13 and it was 1995.

14 Q. Let's switch gears to talking about your -- the Finesse
15 solution to interference intermod problem if that's okay with
16 you.

17 A. That will be fine. Thank you.

18 Q. What is interference?

19 A. Interference is any time there is one signal impeding
20 your ability to look at the signal, your desired signal that
21 you're trying to get, like two radio stations interfering with
22 each other. Maybe your cell phone, you've just got five bars
23 and you lose the signal or got a really bad signal but you
24 don't know why, those sorts of things can be caused by
25 interference.

1 Q. And did you hear the parties for both -- I'm sorry,
2 counsel for both parties in the opening statements talking
3 about passive intermodulation, or PIM?

4 A. Yes, I did.

5 Q. Would you tell the jury what PIM is and what does it have
6 to do with interference?

7 A. PIM is passive intermodulation interference. And
8 intermodulation is it multiplies two signals together that are
9 in whatever the non-linear element is and creates new signals
10 that you don't want, tend to interfere with signals that you
11 do want.

12 It can be -- they could be caused in active or passive
13 elements. An active element is an amplifier. That's called
14 an active intermod. Passive intermods are caused by physical
15 devices that the radio waves might be incident on. You can
16 get a rusty bolt or oxidation, misaligned connectors, and a
17 number of the other items like physical structures outside,
18 sheds, other antennas, your antenna, et cetera.

19 Q. How does a rusty bolt, I think you said oxidation, but
20 I --

21 A. I'm sorry. That's rusting.

22 Q. How can a rusty bolt on a cellular tower create a signal?

23 A. It creates discontinuities that can induce electron flow,
24 and electron flow can then radiate back as a second signal.

25 Q. And how does PIM affect cellular networks?

1 A. PIM affects it by interfering with the received signals
2 that they are trying to receive, making some parts of the
3 spectrum unusable, reducing the available spectrum, thus
4 reducing the capacity of the cell sites or satellite systems
5 or whatever it is that you're dealing with.

6 Q. We've been hearing this word 'spectrum' a bunch in the
7 opening statements and now you just mentioned it. What is
8 spectrum?

9 A. Spectrum is bandwidth. You can think of it, as you know,
10 like do you have a hundred megabits or a gigabit going through
11 and how much radio space does that cover. And spectrum is
12 very, very valuable. And if you can't use it effectively,
13 that's tough.

14 Q. Why is or what makes spectrum valuable?

15 A. Valuable of spectrum is, one, it's a great revenue
16 generator for the cellular companies because then they can
17 sell services. It's a very -- it's a finite and scarce
18 resource, and it's a resource that is auctioned off by the
19 U.S. government. So scarcity and the demand for it, the two
20 make it very expensive.

21 Q. And how expensive are we talking?

22 A. We are talking billions of dollars.

23 Q. Has PIM been a problem for the communications industry
24 generally?

25 A. PIM has been known since at least the 1940s. The problem

1 has been known. The solutions were much, much later. But,
2 yes, it has been known for a long, long time. The math and
3 the physics of the problem has been known.

4 Q. Okay. And when did PIM become a problem for this
5 cellular industry specifically?

6 A. I started to hear about it, read about it, in
7 the -- about 10 years ago. And then since then, it seems to
8 be getting significantly worse which is exactly what we
9 expected to see happen because spectrum gets more crowded,
10 more signals, et cetera, and it just becomes even a more
11 valuable resource.

12 Q. When you came up with your invention, were there existing
13 ways to deal with PIM specifically in the cellular industry?

14 A. Yes. I can think of three. Number one was site hygiene
15 you've heard talked about before. You go out and keep things
16 cleaned up. That's labor intensive. You are using expensive
17 equipment. It tends to -- you have to keep going out and
18 doing it because things do rust or oxidize after that or they
19 get misaligned or had a rainstorm. All kinds of things in the
20 environment can do that.

21 Number two would be you manage the spectrum. If you can
22 get more spectrum, which is expensive, or you're using it less
23 effectively, you've got to move the signals apart from the
24 interfering signals so you can get your signals through. And
25 when you do that, you've got a lot of spectrum you're leaving

1 idle.

2 Third way is to try to put filters over the interference
3 that are in the band. That will work to some effect. But
4 once you filter the stuff that's in band, you end up filtering
5 out some of the desired signal you're looking for at the same
6 time so you're doing damage to that signal and you're not
7 getting a totally clean cancellation signal because you've got
8 some of your desired signal in there as well.

9 Q. Okay. That was a lot. Let's unpack it just a little bit
10 for the jury. Who did this first method that you were talking
11 about which was site hygiene?

12 A. Site hygiene is often done by people called PIM hunters
13 in some quarters, and the cell companies will hire these
14 people to go out and look for the PIM signals and then climb
15 the towers and try to clean things up, aligning equipment,
16 cleaning rust off of the components. Hygiene or just cleaning
17 things up.

18 Q. And were there drawbacks to site hygiene and using PIM
19 hunters?

20 A. Well, number one, it tends to be labor intensive. You
21 have to pay people, and people are always very expensive. And
22 then you have to keep going back and doing it again.

23 Q. How many towers or cell towers are there in the United
24 States, if you know?

25 A. No, I don't know, but I would think they have to measure

1 in the millions.

2 Q. Okay. The second approach that you said about dealing
3 with PIM is to purchase more spectrum?

4 A. Yes.

5 Q. And what did you see as the problem to this approach?

6 A. Well, one, it has to be available to be auctioned off by
7 the U.S. government, and that's getting more and more scarce,
8 and it's very expensive. So those would be the two reasons.
9 So when you go out looking for more spectrum, you're competing
10 with everybody and who's going to be the highest bidder and
11 that drives the cost up.

12 Q. Okay. And the third way that you testified about was
13 filtering signals?

14 A. Yes. Putting filters over the -- the interfering signal
15 to try to remove it out of your desired signal. And the
16 unfortunate thing there is you're going to get some of the
17 desired signal taken out. Any filter will distort the signal
18 to some degree. So now you're introducing some more
19 distortion.

20 Q. So by staying -- by saying that you're going to take some
21 of the desired signal out when you're applying this filter, is
22 that like throwing the good out with the bad?

23 A. Yes. Throwing the baby out with the bath water is
24 another analogy that's commonly used. But, yes, you are
25 throwing away good signal with bad signal.

1 Q. And what does the cellular industry typically call this
2 approach of filtering signals?

3 A. Typically it's just that. It's -- it's trying to filter
4 out interference.

5 Q. Okay. Could you give the jury one succinct way of
6 thinking about the Finesse solution to PIM?

7 A. Yes. Intermod is caused by signals outside of the
8 signal you're looking for or your desired signal. And when
9 they encounter a non-linearity, they mix together in a
10 deterministic manner, which I figured out, and then dropped
11 the signals inside of the signal that you're looking for.

12 Q. You mentioned a term, non-linearity?

13 A. Yes. A non-linearity is any element that does not have a
14 continual transfer function, which means if you put in two
15 watts and you get out four, then you put in three and you get
16 out six, everything's times two. But at some point there's a
17 limit to what that amplifier can put out and you'll start ---
18 you'll be putting in more power and getting less power out.
19 And that compression is called non-linear distortion.

20 You may have experienced it with turning your car radio
21 up too high, turning your stereo up too high, and you really
22 start getting that nasty noise and distortion. That's
23 non-linear distortion.

24 Q. And what does non-linear distortion have to do with
25 interference?

1 A. Non-linear distortion will create these intermods and
2 create interference, create new signals that you did not want
3 that are now in there, and they start falling places that you
4 don't want them.

5 Q. How did you come about your invention to get rid of PIM?

6 A. It was kind of interesting. One night about 2000, 2001,
7 February to March, I don't remember exactly when it was, but I
8 was up one night working on this problem trying to make new
9 filters.

10 My family had gone to bed, and I was just sitting there
11 staring at it and I suddenly realized these intermods are
12 totally predictable. If I have the signals to create them so
13 if I filter off the signals that create them and use those to
14 create the canceling signal, I can not only predict exactly
15 where the intermods will fall, I can make a canceling signal
16 and I can cancel them out without damaging my desired signal.

17 Q. And remind us, by intermods do you mean interfering
18 signals?

19 A. Yes. They are a particular type of interference.
20 There's lots of kinds of interference. Intermodulation
21 interference is a type of interference.

22 THE COURT: Mr. Smith, if you would, please slow
23 down a little bit.

24 THE WITNESS: Yes, sir.

25 THE COURT: We are not used to all this terminology

1 like you are. So if you could go a little slower, it would be
2 helpful.

3 THE WITNESS: Yes, sir. My apologies.

4 THE COURT: Thank you.

5 Go ahead, counsel.

6 Q. (BY MS. XI) What is important about being able to
7 predict intermods?

8 A. Being able to predict them, I will know where they are
9 going to fall. And if was trying to filter them, I would have
10 to see them. But with this technique, I don't have to see
11 them. I can predict where they will be. And even if they are
12 lower in amplitude or height than the desired signal, they can
13 still damage the signal. But with this technique, I can still
14 cancel them out because I know where they're going to fall and
15 I know what they're going to look like.

16 Q. And when did you have this lightbulb moment that
17 cancellation is the way to go?

18 A. When I was sitting up that night after my family had gone
19 to bed, looking at some of my block diagrams, and when I
20 suddenly realized I could create the canceling signals, as
21 long as I had those signals that were outside my desired
22 signal, once I got a copy of them, I could create, I could
23 predict where they were going to fall, and I could create
24 copies of them, very accurate copies of them, and cancel them.

25 Q. And how did that make you feel once you had that

1 revelation?

2 A. Oh, that was a -- it was an incredible moment. It was
3 like, oh, my gosh, I just solved a problem that's been -- that
4 we've been battling for years and years and I knew exactly how
5 to solve it and I know I can do it effectively. Now,
6 intellectually, I knew that. We found ways of verifying that
7 later.

8 Q. Is your PIM cancellation solution a physical filter that
9 you would go on a receiver line or an antenna?

10 A. It's not a filter. It's a process, it's an algorithm.
11 And it could be put in multiple different places inside the
12 radio system to take out the -- the interference.

13 Q. And when you conceived of your invention, I think you
14 said February or March of 2001, did it seem pretty simple?

15 A. I wouldn't call it simple. I had to look at the problem
16 from a different direction. It was a different way of looking
17 at it. I wasn't looking at trying to cancel it. I started
18 looking at how to predict it and then cancel it. I wasn't
19 filtering it. I was canceling it. I wouldn't call it simple.

20 Q. Okay. And by canceling it, do you mean something like
21 noise canceling headsets or headphones?

22 A. That's a very good analogy. If you use noise canceling
23 headsets, you turn them on, and all of a sudden the noise is
24 less and you can better hear the signal you are looking for.
25 So, yes, noise canceling headset is a reasonable analogy.

1 Q. After you came up with this idea about intermod
2 cancellation in February or March of 2001, what did you do?
3 Did you do anything with that idea?

4 A. Yes, I did. I realized it was very valuable, could solve
5 some very, very difficult problems in communications. And so
6 I went out and got with a patent attorney to start drafting up
7 the patent to protect the technology.

8 I had worked at other companies where I had been a
9 co-inventor on different patents, and they always brought in
10 patent attorneys. And I thought if this is that important, I
11 better bring in a professional to do it so I do it and get it
12 done right.

13 Q. And did you and the patent attorney file a patent
14 application for these ideas?

15 A. Yes, we did. The initial patent, the provisional patent,
16 was filed in May of 2001.

17 Q. Did the United States Patent Office grant that patent?

18 A. Yes, they did.

19 Q. And let me just show you Plaintiff's Exhibit 3, PX 3 on
20 the screen, and I'm also holding in my hand the patent that
21 you've all seen by now. What is this patent?

22 A. This is Patent '134, which was the result of the initial
23 invention.

24 Q. Could you speak into the mic?

25 A. I'm sorry. Yes, this was the initial patent that I

1 created and it was the -- the first one that I did in 2001.

2 Q. Okay. And why does this one have the ribbon out on the
3 front?

4 A. The first issue of patents from the Patent Office carry
5 that ribbon.

6 Q. Let me direct you to the first page of this patent that's
7 on the screen right there. What is the issue date of this
8 patent again?

9 A. The issue date is March 18th, 2008.

10 Q. Okay. And when did you file this patent?

11 A. It was filed initially in May 15th, 2001.

12 Q. So it took about seven years for you to get the patent?

13 A. That is correct.

14 Q. Why did it take so long?

15 A. The Patent Office does a rather extensive due diligence
16 looking at, you know, what things they think are right, what
17 things they think you need to fix, what claims they believe
18 are valid and what you have to do to make them valid, and they
19 compare it to prior art and you have to explain to them why
20 yours is different than the prior art. And this back and
21 forth --

22 THE COURT: Just a minute, Mr. Smith.

23 Yes, counsel?

24 MR. NELSON: Object. This is 702 and also calling
25 for legal conclusion as well, Your Honor.

1 MS. XI: Your Honor, I'm asking for his personal
2 experience with the Patent Office.

3 THE COURT: Well, and he can certainly testify to
4 his legal -- his personal experience with the Patent Office.
5 Him opining about what the Patent Office typically does goes
6 beyond his personal experience. He needs to -- he needs to
7 limit his testimony to what happened with him --

8 MS. XI: Yes, sir.

9 THE COURT: -- not what he understands the Patent
10 Office generally does.

11 So I'll sustain it in part, but overrule it in part
12 following those instructions.

13 MR. NELSON: Thank you, Your Honor.

14 MS. XI: Thank you, Your Honor. I'll rephrase the
15 question.

16 Q. (BY MS. XI) Mr. Smith, in your experience with the
17 Patent Office in those six-and-a-half years it took for you to
18 get this patent, what was it like?

19 A. We had a number of what they -- we received called office
20 actions where the Patent Office would ask us for more
21 information, would ask us for clarification, would ask us for
22 a number of different items, and to tell them the difference
23 between what they found as prior art and what we were
24 patenting.

25 And these cycles can easily take six or seven months from

1 the time they send it to us, we respond to them, they come
2 back and respond to us. So there were probably -- I don't
3 know. There were quite a few of those that went back and
4 forth, and that's what took the time.

5 Q. And you personally participated in that process with --

6 A. Yes --

7 Q. I'm sorry. With your patent attorney?

8 A. That is correct.

9 Q. Was this your first patent?

10 A. It was my first solely owned patent. I had had a number
11 of other patents where I was co-inventor with different
12 companies that I'd worked for--Ford Aerospace, Lockheed, L-3,
13 et cetera. So I've gotten patents with other companies, but
14 they -- the companies own them, I was a co-inventor on those.

15 Q. Okay. And what was it like when you found out the Patent
16 Office granted it?

17 A. That was a pretty good day. I was very proud of it so I
18 ended up going around and showing it to all my friends. They
19 probably got tired of hearing about it.

20 Q. Do you own this patent, the '134 Patent?

21 A. No. I have assigned it to Finesse Wireless, LLC.

22 Q. Okay. And where does it say this on the screen?

23 A. On this one, it was -- we were originally Finesse
24 Wireless, Inc., and evolved into Finesse Wireless, LLC, and
25 ultimately assigned all of my patents with regard to intermod

1 cancellation to Finesse Wireless, LLC., who owns them all
2 today.

3 Q. Okay. And Finesse Wireless, LLC., is the Plaintiff in
4 this lawsuit?

5 A. That's correct.

6 Q. Okay. I am holding in my hand Plaintiff's Exhibit 4,
7 which is the other patent-in-suit. Could you just tell the
8 jury which patent this is?

9 A. This is Patent 9,548,775, which we refer to in short as
10 Patent '775.

11 Q. So did you apply for the '775 Patent about it looks like
12 six years after you had filed for the '134 Patent?

13 A. Yes. It was filed for in September of '07.

14 Q. Okay. Does the Plaintiff Finesse also own this patent?

15 A. Yes, same as '134.

16 Q. And can you tell us what the invention of the '775 Patent
17 is?

18 A. It's focusing heavily on passive intermods and how to
19 handle them in multi-carrier environments and with dual band
20 radios, again with co-located antennas and environments. So
21 it differed from the other patents in that regard.

22 Q. Okay. You said multi-carrier. What does that mean?

23 A. That means I've got multiple signals at the same time
24 where I might be sending signals to two or three different
25 cell phones. Each cell phone needs its own signal. That's a

1 multi-carrier environment. For a satellite environment, I'm
2 sending multiple signals to the satellite to be distributed
3 around the earth.

4 Q. Earlier you mentioned some other patents that you -- your
5 name is on the first page of. How many patent do you have to
6 your name?

7 A. I think I've got 12, plus about a half a dozen
8 applications. I saw the list the other day, but I forget
9 counting exactly.

10 Q. So that's 12 issued patents and more applications, patent
11 applications?

12 A. That is correct.

13 Q. And who owns those patents?

14 A. The -- some of them belong to companies that I've worked
15 for where I was a co-inventor, and six of them belong to
16 Finesse.

17 Q. Okay. Are you proud of your patents?

18 A. Very. They were a lot of work, a lot of time thinking
19 hard about how to make things actually work, and it took a lot
20 of work to get them.

21 Q. Okay.

22 MS. XI: And, Mr. Boils, will you please put
23 Plaintiff's demonstrative No. 1 on the screen.

24 Q. (BY MS. XI) Mr. Smith, do you know what this slide is
25 trying to depict?

1 A. It's showing a number of what are called forward
2 citations, and that's where when other people start doing
3 patents in a similar vein or similar field of these patents,
4 they reference these patents -- my patents. And my patents
5 have been referenced by at least 50 other patents by members
6 of different companies. This is a sample of these. There's
7 been 50 last time I looked, and the number was still growing.

8 Q. So there are, I'm counting, five companies on the screen.
9 Are you saying that these companies and all the patents that
10 are listed underneath their logos cite to the '134 and the
11 '775 Patents?

12 A. That's correct.

13 Q. Why do they cite to your patents?

14 A. Well, number one, it's a --

15 MR. NELSON: Objection. That's speculation, Your
16 Honor.

17 THE COURT: Sustained.

18 Q. (BY MS. XI) Okay. What is a forward citation again?

19 A. It's when you're doing your own patent or sometimes
20 technical papers, you cite previous work similar in the field
21 as part of the knowledge base of how one -- what's going on in
22 the industry.

23 Q. Okay. And you said that this list is growing does. That
24 mean that from time to time you check on who else is citing to
25 your patents?

1 A. Yeah. We look at it occasionally and see who else is
2 because, if we were looking for more partners in business,
3 that's a good place to look.

4 Q. Could you just read off this slide here for the jury some
5 of the company names who are citing to your patents?

6 A. Well, there's Cisco, Qualcomm, Ericsson, Intel, and
7 Motorola.

8 Q. Were you the first person to think of canceling signals?

9 A. No. No. Noise canceling headsets cancel signals.

10 Q. And, Mr. Smith, do you plan on walking through your
11 patents today with the jury?

12 A. No, I wasn't going to do that. Just let them know the
13 key parts of it that make it interesting.

14 Q. And are you here to tell the jury how AT&T and Nokia
15 infringe on your patents?

16 A. No. I'm not an infringement expert. There are other
17 persons who are better qualified to do that than I.

18 Q. And if that's the case, then how did you come to the
19 conclusion that Defendants infringe your patents?

20 A. We've been watching the industry cell sites advertisement
21 of different companies for the last several years. We
22 understood the physics well. We knew the problem sooner or
23 later was going to show up, and we were just looking for when
24 it finally did. We tried to talk to other companies earlier
25 telling the problem was coming, can we help you fix it, but we

1 didn't get any takers at that point.

2 Q. You mentioned that there are experts who are evaluating
3 the infringement case against AT&T and Nokia?

4 A. Yes, that is correct.

5 Q. Are you referring to Doctor Wells?

6 A. Yes, I am.

7 Q. And has he been having access to documents that you
8 haven't been given access to?

9 A. That is correct. I couldn't do the infringement analysis
10 because I was precluded from looking at AT&T and Nokia's
11 documents.

12 Q. After you developed the idea of intermod cancellation,
13 did you do anything to make sure that your solution wasn't
14 merely theoretical like Mr. Dacus said, but actually worked?

15 A. Yes, we did. We did three tests.

16 Q. And could you just generally give the jury a roadmap of
17 the tests that you conducted to make sure that your solution
18 worked?

19 A. Yes. Soon after we filed the provisional patent in May
20 of 2001, I hired an electrical engineer to create a Matlab
21 simulation for me of the architecture based on cellular
22 standards and show that the intermods would be created and
23 that we could cancel them out effectively. And we had the
24 results of those -- those tests.

25 Q. Was that one test?

1 A. That was one test that was simulation.

2 Q. Okay. What was the second test?

3 A. The second test we -- I was working with L-3
4 Communications, working at L-3, and we were looking at seeing
5 if we could mitigate the passive intermod problem in satellite
6 terminals. And we ran a test there that showed it worked
7 extremely well on a real Satcom terminal. So it wasn't
8 theoretical. It was a real terminal that we ran the algorithm
9 tests on to show they worked.

10 Q. What year was that?

11 A. That was in 2008.

12 Q. Okay. And just at a very high level, what was the third
13 test that you conducted?

14 A. The third test, we were looking at trying to set up a
15 business relationship with L-3 to do cellular products, so we
16 built a bread board focusing on the cellular bands that the
17 cellular users are actually doing, generated the intermods
18 within those so we could cancel them, and showed a good level
19 of performance after signal cancellation.

20 Q. Okay. Intermod, let's take a deeper dive into the first
21 place if that's okay with you.

22 A. Yes. Thank you.

23 Q. What is Matlab?

24 A. Matlab is a computer program that runs on a number of
25 different computers. It's used for a wide range of

1 simulations. They are used in telecommunications. They are
2 used in mechanical engineering. They are used in
3 biomechanical systems. But it's just a modeling
4 infrastructure that one can build systems in and then test out
5 their validity.

6 We wanted to do that before we started putting a lot of
7 money into patent prosecution and before we went out and
8 started advertising that we had something good. We wanted be
9 able to prove it would work.

10 Q. And how did you make sure to set up realistic models to
11 be tested on Matlab?

12 A. I gave the engineer doing the simulations my
13 architecture, explained it to him, and gave him the standards
14 that were used in cellular for intermod management. And amps
15 and CDMA's are some of the cellular systems so that we were
16 doing something that was realistic. And so that's what we
17 used for the basis of the test case.

18 Q. And what were the results of the Matlab simulation like?

19 A. They were really quite good. We were extremely pleased.
20 We were originally looking for three to six DB suppression of
21 the intermods, and we were getting at least 15.

22 Q. What is a DB?

23 A. A DB is a decibel. You can -- it's normally used to
24 measure power levels or signal-to-noise ratio. So you might
25 say the signal-to-noise ratio is 10 DB. That tells you the

1 difference between your signal and the noise.

2 Q. And can you tell the jury what it does mean to have
3 results that were at least 15 DB of improvement?

4 A. 15 DB is a factor of 32 because every time you do 3 DB,
5 you've multiplied by 2. So 15 DB was the -- we got the
6 interference to be 1/32nd of the original power that it had,
7 which took them from being a very serious interfering signal
8 to not doing us any harm at all.

9 Q. Is DB expressed in algorithmic form?

10 A. Yes, it is. It's similar to the Richter scale that we
11 hear about earthquakes being 5.5 6.5. Well, 6.5 is 10 times
12 the 5.5. 7.5 is 10 times that. So, yes, it's a algorithmic
13 scale.

14 Q. And 15 DB is how many times the 3 DB that you were
15 looking for?

16 A. Well, it's -- it's a 32 DB improvement in the -- 32X.
17 So the -- we knocked the signal down to 1/32nd of what it was,
18 the interfering signal.

19 Q. Okay. Let me direct you to Plaintiff's Exhibit 343. I'm
20 going to put it on the screen.

21 Can you tell me what this is, what this document at the
22 bottom of the screen is?

23 A. Yes. This was a communication with Qualcomm Partners,
24 who is a venture capitalist. We were looking at seeing if we
25 could get investment. It contains the Matlab code as well as

1 the test results of that.

2 Q. Okay. If you could please speak into the mic --

3 A. I'm sorry.

4 Q. -- or move it so everyone can hear you?

5 A. My apologies.

6 Q. What is the date of this email?

7 A. The date of this is March of 2002.

8 Q. And can you just walk the jury through the Matlab setup,
9 I think, which is appended to this cover email?

10 A. Yeah. There's a lot -- there's about a hundred pages of
11 code here, so I won't walk you through that. But down at the
12 bottom of it are the block diagrams that show how the
13 simulation was set up, how the models were developed, and how
14 they were run. These are examples of them that walk through
15 the different functions in the invention to perform the
16 intermod cancellation.

17 Q. I'm going to show you Plaintiff's Exhibit 135. What is
18 this document?

19 A. This is a briefing deck that we used for a number of
20 potential partners or investors that we briefed. This
21 particular one was given to Qualcomm in 2004, and it goes
22 through our architecture, our technology, the
23 anticipated -- they are the actual test results, and the
24 business cases that we might venture forward with different
25 players.

1 Q. And we're talking again about the test results of the
2 Matlab simulation?

3 A. That is correct.

4 Q. Do you see on the top right-hand corner there, Patents
5 Pending? What does that mean?

6 A. That means that we had patents and application that were
7 being prosecuted. We always put that on so that people knew
8 that we were protecting the technology and we considered it
9 very valuable.

10 Q. And what does it mean to have proprietary and
11 confidential on the bottom legend of the document?

12 A. So that's one more layer of protection. We found the
13 stuff so valuable that we wanted to make sure that everyone we
14 talked to was very clear that we considered this our IP.

15 Q. Okay.

16 MS. XI: If we could please turn to page 16.

17 Q. (BY MS XI) Does this show the results from the Matlab
18 simulation?

19 A. Yes, it does.

20 Q. And directing your attention to the plot that is on the
21 top left-hand corner--thank you--can you explain to the jury
22 what we are seeing here?

23 A. Yes. Given the signals that create intermods, the
24 algorithm uses them to compute an estimate of what that
25 intermodulation signal would look like. And this is the

1 result of the estimation of the intermod signal.

2 Q. Okay. And if we could just advance and call out the
3 second plot to the right of this.

4 A. The second plot shows the desired signal we're looking
5 for right. In the middle you see it sticking up, and you see
6 the intermod interference on the right. That is the one
7 that's actually generated by the non-linearities in the test
8 system.

9 Q. Okay. Can you please, using the touch screen, show the
10 jury or circle for the jury which is the desired signal?

11 A. This is the desired signal.

12 Q. Okay.

13 A. That's the desired signal. That's the one we are
14 trying -- trying to get.

15 Q. And which one are you trying to remove or cancel?

16 A. The big one on the right.

17 Q. Okay. If we could please go to the third plot that's on
18 the page on the bottom? What does this show?

19 A. This is the result after intermod cancellation. As you
20 can see with this one, the intermod is not measurable in the
21 system and we have a very clean desired signal now that we can
22 process and work with and capture.

23 Q. So the spike on the right is --

24 A. Gone.

25 Q. Okay. What was the plan for Finesse after you saw the

1 results of this test?

2 A. Well, we realized that we actually were getting much
3 better results than we had hoped. We realized it was a very
4 powerful technology we could use in many different
5 telecommunication industries that had to struggle with
6 intermods. And we started talking to venture capitalists. We
7 talked to a number of different industry partners showing them
8 what we could do and how we could do it and what we thought
9 the benefits were of it to see if we could find someone to
10 either invest in us or partner with us or license our
11 technology to put it into their products.

12 Q. Let's take a look at Plaintiff's Exhibit 77. What is
13 this document?

14 A. This was our -- one of our marketing documents that we
15 created to go out to people to be able to explain to them what
16 it was we had to offer and the benefits that we could offer.

17 Q. What is the date of this document?

18 A. This document is -- oh, excuse me -- January 29th, '03.

19 Q. And did you draft this document?

20 A. I jointly drafted it with a gentleman by the name of Mr.
21 Ira Marks who unfortunately has passed away.

22 Q. And who was Mr. Marks?

23 A. Mr. Marks was one of my partners who was a good
24 businessman, very well connected in the Silicon Valley with
25 venture capitalists and a wide range of other companies,

1 getting us entree in to talk to people about what we could
2 provide.

3 Q. And if you could turn -- actually, was Mr. Marks or did
4 he ever hold any position within Finesse?

5 A. Yes. He was operating as our COO, and I was operating as
6 the CEO/CTO.

7 MS. XI: And if you could turn with me to page 7 of
8 this document. Let's blow up the section on technology
9 validation.

10 Q. (BY MS. XI) What does this say?

11 A. To summarize what it was, we went out to industry
12 specialists independent of us to do a due diligence and see if
13 what we thought we had -- they thought it would be as good as
14 what we thought we had. And we went to two individuals, Gary
15 Kelson of the Berkeley Wireless Development Center and Dr. Tom
16 Lee, a double E professor at Stanford University, and just
17 asked them, what do you think of this? Do you think it has
18 any problems? Do you think it's doable? And these were the
19 responses we got back.

20 Q. So what does it mean to conduct due diligence?

21 A. You find independent persons who are knowledgeable in the
22 field, objective and independent, to give you an assessment of
23 where you're at and what you you're doing. Because if you
24 don't do that, if you're not sure you're not fooling yourself.
25 That's just not a good thing.

1 So we asked people to look at it who are outside of the
2 group that we were doing it.

3 Q. And what did Mr. Kelson and Professor Lee find? I'm
4 sorry. Where did you find Mr. KelsonKeson and Professor Lee?

5 A. They were part of a broad portfolio of Mr. Ira Marks'
6 contacts in Silicon Valley. So he knew them and he brought
7 them to the party.

8 Q. And do you recall what their reaction to your solution
9 was?

10 A. They were very praiseworthy, thought it was something
11 totally unique they hadn't seen before, at least that's what
12 they told me, and that our assumptions on the quality of it
13 were valid, and that they thought it was disruptive and
14 elegant, which was rather important.

15 They also said it was something the entire
16 telecommunications industry could benefit from, be it from
17 cellular to terrestrial microwave to satellites, et cetera,
18 any place where this intermod problem was encountered.

19 Originally we were talking about 3 to 6 DB, and Doctor
20 Lee thought we would get at least 10 and maybe more and he was
21 right because we got 15 to 30. We always got at least 15.

22 They looked -- we had them look at the architecture and
23 say, do you see any reason this can't be done? Do you see
24 anything that would preclude it?

25 And they said, no, they didn't see any fly in the

1 ointment, looked totally implementable. But like all good
2 technologists, they will always tell you the devil is in the
3 details. They are right; you have to go through the details.
4 But at that point they saw nothing that would preclude the
5 development of this technology.

6 Q. Why are the words 'disruptive' and 'elegant solution' in
7 quotes?

8 A. Because it was looking at a very complex problem that had
9 been around since at least the 1940s, and a good clean
10 solution had not been developed at that point. And if you do
11 something that is that much different, you can actually
12 disrupt the way business is doing. So business does something
13 better now, a different way of doing it.

14 Q. Okay. Was this your paraphrase of what Doctor Lee said
15 to you?

16 A. No. Whenever I went to meetings with people, I always
17 carry a notebook. So I wrote those things down, and then we
18 translated them into here.

19 Q. Okay. And did you solicit this praise from --

20 A. Absolutely not. We said we wanted an independent
21 assessment of what we had, what we were doing, and the
22 viability of that. And then we got this -- this is the
23 feedback that we got.

24 As a matter of fact, Doctor Lee was very praiseworthy and
25 told me if I wanted to apply to the Ph.D. program at Stanford,

1 he would have been more than happy to sponsor me for it based
2 on this technology.

3 Q. Did you take him up on that?

4 A. No, I didn't. At that time I was trying to make a
5 business out of this. I was trying to find investors and work
6 out all the more and more technical details. And I had two
7 small children at home, and so that really -- they had to be
8 my highest priority.

9 Q. Who did Finesse reach out to as partners and investors in
10 the next few years?

11 A. There were a number of venture capitalist friends. I
12 can't think of them all right at the moment. We talked to
13 AT&T, we talked to Nokia, we talked to Qualcomm, we talked to
14 Samsung. At least that's a set there. There were a lot more.
15 But we were talking to a lot of people, try and find somebody
16 who would see the problem that we saw coming.

17 MS. XI: Let's pull up Plaintiff's Exhibit 351 and
18 let's go down to the second page.

19 Q. (BY MS. XI) What is this document?

20 A. Okay. This is a document between Ira Marks and AT&T-Ron
21 Nelson, the CTO at that time, telling him that we thought
22 we -- we had something pretty valuable and we'd like to talk
23 to him about it. We did brief the results to them, but we
24 didn't get what we were looking for.

25 Q. What were you trying to pitch to AT&T Wireless?

1 A. Well, we anticipated these intermod problems were going
2 to become a problem. This was, you know, back in 2002. And
3 as you can see, the problems really started showing up in the
4 mid 2013-2014 time frame. But we were looking for someone to
5 help to fund our investment so we could develop products that
6 could mitigate these problems before they really heavily
7 manifested themselves. We knew they would based on the
8 physics.

9 Q. And looking at this document, what was the date of those
10 discussions?

11 A. They were in January of 2002.

12 MS. XI: And if we could go back up to the first
13 page? Right there.

14 Q. (BY MS. XI) What did AT&T say in response to you?

15 A. Long story short, they really weren't in the business of
16 developing technology or funding technology developments and
17 we were way too early of a company. We just -- we didn't have
18 products. And they said, when you have products in hand, you
19 know, you might come back and talk to us and include something
20 we can test, put into our system and test. And we didn't have
21 that.

22 Q. Do you have to have a product to have a patent?

23 A. No, you do not.

24 Q. Did you say that Finesse also spoke with Nokia during
25 this time period?

1 A. Yes, we did.

2 Q. Okay.

3 MS. XI: Let's please pull up Plaintiff's Exhibit
4 352 and let's scroll to the email at the very bottom.

5 Q. (BY MS. XI) What is this document, sir?

6 A. Ira Marks had been in contact with Zac Renner. We
7 basically proposed a similar set of things to Nokia. They
8 were praiseworthy and they were very polite, but they said
9 that they just -- they wanted to have products, too, before --
10 that they could test before they were ready, and our
11 technology was too early in development for them.

12 Q. So is this around January of 2002?

13 A. Yes, it is.

14 Q. Okay. And Mr. Zac Renner is somebody at Nokia?

15 A. That is correct. He was.

16 MS. XI: Let's pull up Plaintiff's Exhibit 337.

17 Q. (BY MS. XI) What is this document?

18 A. That was another one of the emails to -- to Zac where
19 they were asking questions of Mr. Renner, and I was trying to
20 answer his questions, showing him what we thought the
21 simulations, the technology would do, and what we thought the
22 benefits to the business would be for that, and possibly
23 exploring some sort of a joint venture or them including our
24 product -- our technology into their products.

25 Q. And what is the date of these emails?

1 A. These are also in the early 2002 time frame, March time
2 frame.

3 Q. Okay. So this is about two months after you first
4 reached out to Nokia?

5 A. Yes, pretty close. There was some ongoing conversations
6 between Mr. Ira Marks and Mr. Renner.

7 MS. XI: Now, let's scroll to the bottom email on
8 the second page.

9 Q. (BY MS. XI) What did Nokia tell you at this time?

10 A. It was basically that we were too early of a company, we
11 didn't have the maturity yet, and we -- we didn't have
12 products. They might be interested in talking to us later,
13 but when we had something, we could come back that that they
14 could actually test.

15 Q. Did you say that you also talked to Qualcomm?

16 A. Yes, I did.

17 MS. XI: Okay. And let's pull up what was
18 previously displayed before, Plaintiff's Exhibit 135.

19 THE WITNESS: Yes. There were a couple of meetings
20 with Qualcomm with the engineers and the CTO where we briefed
21 the technology to them, we briefed to them how it worked, the
22 benefits that we would get, the results that we got from
23 simulations of what we anticipated. At that point we were
24 trying to get a business case where they could put our
25 technology into their chipsets, into their cell phones, but

1 they weren't ready yet because they didn't see the problem big
2 enough yet.

3 Q. (BY MS. XI) Could you just walk the jury through this
4 presentation and describe it quickly?

5 A. This is a very long presentation, but it actually goes
6 through and describes how the invention works to them and the
7 results, and proposes business cases that we might have for
8 working together. Qualcomm declined for reasons similar to
9 AT&T and Nokia, but the CTO did suggest to me that I probably
10 ought to apply for employment there because he thought the
11 technology was pretty cool.

12 Q. Did you ever make a value proposition for Qualcomm?

13 A. The proposition we made was at a very high level. We
14 didn't do a detail. It was -- the value proposition was that
15 we would like them to consider taking our technology, our
16 algorithms, and putting them into their chips. We had done
17 estimates on how many gates it would take and how much of the
18 chip it would take up and it came out to be a pretty small
19 percentage. But cost to goods is always critical, and every
20 penny in the production is a business case, and they didn't
21 have a big enough problem yet that they needed to do it, so
22 they weren't ready to increase any of the cost on their goods.

23 MS. XI; If you could pull up Plaintiff's Exhibit
24 117.

25 THE COURT: Let me interrupt for just a minute.

1 I think part of the reason, Mr. Smith, with following
2 your testimony is these are long answers. If we could break
3 them up into shorter questions and answers, I think it would
4 be easier to follow for the Court and the jury and the court
5 reporter. You're volunteering information that may be
6 relevant but it's not called for by the question. "Did you
7 make a proposition?"

8 "We did at a very high level."

9 Well, that's a complete answer. But then you go into
10 cost of goods and all kinds of other things that the question
11 doesn't call for.

12 Counsel, if you'll ask specific discreet questions, and
13 if you'll limit the answers to the questions asked and break
14 these up into smaller bites I think it will be better for
15 everybody. So let's go forward on that basis.

16 MS. XI: Yes, Your Honor.

17 THE WITNESS: My apology, Your Honor.

18 THE COURT: Not a problem. I'm just trying to help
19 the process.

20 MS. XI: Plaintiff's Exhibit 117.

21 Q. (BY MS. XI) Is this the document that discusses the
22 value proposition that Finesse made to Qualcomm?

23 A. Yes.

24 Q. And do you recall how Qualcomm reacted to your proposal?

25 A. They weren't at a stage that they were ready to work with

1 this value proposition.

2 Q. And what was your impression as to why they were not
3 ready to partner with you back in this time?

4 A. My impression was that the problem wasn't bad enough yet.

5 Q. Okay. And what do you mean by 'the problem'?

6 A. The intermod wasn't causing enough interference to
7 degrade their products.

8 Q. And we're still talking about the 2004 time frame.
9 Right?

10 A. Yes, we are.

11 Q. Okay. Did Finesse succeed in obtaining funding or a
12 partnership with any of these companies that it reached out
13 between the 2002 and 2004 time frame?

14 A. No, we did not.

15 Q. Let me show you an email, Plaintiff's Exhibit 269. On
16 the bottom of the first page do you know what this email is?

17 A. Yes. There was a communication between Mr. Mark Chapman
18 and David Shively on third order intermods.

19 Q. Okay. Who is Mr. Mark Chapman?

20 A. Mark Chapman is another member of Finesse Wireless who
21 was operating as our CEO and business development manager.

22 Q. And who is David Shively?

23 A. He was a key member at AT&T who was concerned with these
24 problems.

25 Q. Okay. And what is the date of this email?

1 A. This was in the 2015 time frame.

2 Q. So this is about 10, 11 years, maybe even 12 after you
3 had reached out to AT&T initially?

4 A. That is correct.

5 Q. And you said that this is a document that discusses third
6 order intermods. What are third order intermods?

7 A. The intermods that are of importance are odd numbers, but
8 basically the third order intermod is usually the most
9 damaging. It's got the greatest amount of power in it. As
10 they go up higher they become less.

11 Q. Are third order intermods a particularly problematic
12 thing for wireless carriers?

13 A. Yes, they are. If they have an intermod problem, it's --
14 the third is the most prominent.

15 Q. Okay. Do you see the second sentence on this document
16 here? It says, "Using PIM testers and other analysis, we know
17 that the PIM sources are external to our own antenna systems."

18 A. Yes, I do see that.

19 Q. And do you recall earlier how Mr. Dacus made a
20 distinction of air PIM or -- air PIM and internal PIM?

21 A. Yes, I do remember that.

22 Q. And does your patent solution deal with one or the other?

23 A. It deals with both.

24 Q. How so?

25 A. Because it can look at all the signals and pick them off

1 individually and process them individually to cancel them.

2 Whether they're from outside or inside, the algorithm will not
3 care. We can do them independently.

4 Q. By being outside or inside the algorithm, do you mean the
5 signal is being generated from some source?

6 A. Yes. According to the distinction made by AT&T between
7 internal and external we never made that distinction. We just
8 took care of all of them.

9 Q. What does this 2015 email show you about the importance
10 of your invention?

11 A. It showed us that AT&T was starting to recognize the
12 problem that we had been predicting for over 10 years.

13 Q. Why did Finesse speak with AT&T again in 2015?

14 A. Personal relationship between Mr. Mark Chapman and
15 Mr. David Shively. I think that's how he pronounces it. He
16 was aware of it and we thought we would re-engage to see if
17 they were interested.

18 Q. When you showed your technology to AT&T, Nokia, and
19 Qualcomm 20 years ago, was their reaction to your technology
20 on the whole positive or negative?

21 A. It was very positive.

22 Q. And in your experience, did these companies develop and
23 implement new features and technologies in their equipment and
24 networks if there wasn't a problem that needed to be fixed?

25 A. I wouldn't think so.

1 Q. Okay. And when you were pitching to AT&T Nokia and
2 Qualcomm 20 years ago, did any of them ever tell you that the
3 PIM cancellation solution that you described was old?

4 A. No.

5 Q. Did anyone ever tell you that they had already seen a
6 PIM-C solution like yours?

7 A. No.

8 Q. Did they ever tell you that your PIM-C technology was
9 obvious or not new or novel?

10 A. No.

11 Q. Did anyone tell you that your technology was no good?

12 A. No.

13 Q. Okay. Let's move onto the third test that you conducted.
14 Was this in the 2008 time frame? I'm sorry. The second test
15 that you conducted.

16 A. Okay.

17 Q. I can't count. Let's -- okay. Is this in the 2008 time
18 frame?

19 A. Yes.

20 Q. And how did you go about conducting this demonstration?

21 A. Well, we wanted to put our technology into a real-world
22 scenario, real-world hardware, so we, working with L-3 in one
23 of their satcom terminals, it was designed to only handle one
24 carrier because of PIM. That was the big problem where they
25 could only do one carrier. It was a tactical terminal. And

1 we tested with real signals and generated the PIM and showed
2 that our algorithms canceled very, very well.

3 MS. XI: Let's pull up Plaintiff's Exhibit 370.

4 Q. (BY MS. XI) Do you recognize this document?

5 A. Yes, I do.

6 Q. And what is it?

7 A. This is the report given to L-3 management on the results
8 of the Phoenix demonstration. Phoenix is the name of the
9 satcom terminal.

10 Q. I'll direct your attention to page 6 of this document.
11 What does that show on the left there?

12 A. The left is the block diagram that we used for the test
13 setup and the test initiation.

14 MS. XI: And could we please blow up the two
15 diagrams -- or the two pictures on the right?

16 Q. (BY MS. XI) What are these pictures?

17 A. Those are pictures of the Phoenix terminal. It's a
18 tactical Army terminal for satcom for tactical troops, and
19 it's mounted on a Humvee with a complete communications system
20 that handles X-Band through different satellites.

21 Q. What's the shed that's depicted on the photo on the left?

22 A. That's where we put the test equipment then we ran cables
23 in and out so we didn't have to make the engineers sit out in
24 the rain.

25 Q. You said satcom. What is satcom?

1 A. Satellite communications.

2 Q. And what is X-Band?

3 A. X-Band is a frequency between 7 and 9 gigahertz that's
4 used by the military, and has been since the early '60s, for
5 their tactical communications.

6 Q. Okay. And what did the testing involve in terms of the
7 Phoenix demonstration?

8 A. We put two transmit signals into the terminal and they
9 would -- because there were two of them in the passive
10 intermods, they would generate interference signals, and then
11 we showed that the algorithms that we were using and the test
12 setup would cancel those intermods.

13 Q. All right. Directing your attention to page 16 of this
14 presentation --

15 A. Uh-huh.

16 MS. XI: Let's zoom in on the plot on the top left.

17 Q. (BY MS. XI) Could you tell the jury what this plot
18 illustrates?

19 A. Yes. We have two signals there toward the right. They
20 are identical signals except that one of them has the intermod
21 that we talked about and one of them does not.

22 Q. Does this show the results to the Phoenix test?

23 A. It shows the result of the test before PIM cancellation.

24 Q. Okay. And could you just circle for the jury where the
25 two desired signals are?

1 And desired signals, are those the signals that you want?

2 A. Yes; the ones we're trying to recover.

3 Q. Okay. And can you just clear the screen and show the
4 jury --

5 MS. XI: After the blow-up, please, Mr. Boles.

6 Q. (BY MS. XI) And show the jury where the intermod is.

7 A. Intermod. The intermod is right there.

8 Q. Okay. So the intermod is sitting on top of one of the
9 desired signals?

10 A. Yes, but it also goes all the way down to here; you just
11 don't see it.

12 Q. Okay. Sorry. Please finish.

13 A. It's a full range. Very powerful signal.

14 MS. XI: If we could turn to the next page of this
15 presentation, and blow up the plot on the left.

16 Q. (BY MS. XI) What does this graph illustrate?

17 A. That's the signal -- the desired signal on the left that
18 never had a PIM and the desired signal on the right that had a
19 PIM and it was canceled out. So you can see that they look
20 alike now and the spike on top of the one on the right is now
21 gone.

22 Q. So is this the after of the before and after --

23 A. Yes.

24 Q. -- in terms of the --

25 A. Yes.

1 Q. --two graphs? Okay.

2 A. The one we just looked at before was before cancellation,
3 and this is the one after cancellation.

4 Q. And could you circle for the jury where the intermod was
5 that you had removed?

6 A. It was right there.

7 Q. Okay. Let's talk about the third test that you
8 mentioned. What was that test?

9 A. That's a test where we wanted to do it actually in the
10 cellular bands just to demonstrate to the L-3 management that
11 it was a viable solution.

12 Q. And when was that run?

13 A. That was in 2013-2014.

14 Q. What was the purpose of it and how did you set it up?

15 A. We set it up so that we were transmitting in the -- what
16 they call the BNG blocks of a cellular band, which are ones
17 used by cellular carriers, and those signals would then go
18 through a non-linearity, create the intermods, and then we
19 showed that the algorithms and the hardware could cancel them
20 out. This was a breadboard desktop-type setup.

21 Q. What is a breadboard?

22 A. Breadboard is where we just put together components
23 that's not a product, but it does the same function the
24 product would do, so we can know that we can get the signal
25 integrity if we wanted to build a product to do the same

1 thing.

2 MS. XI: Let's look at Plaintiff's Exhibit 104.

3 Q. (BY MS. XI) Is this the breadboard lab setup?

4 A. Yes, it is.

5 Q. And let me show you Plaintiff's Exhibit 242. What is
6 this document?

7 A. This was the briefing that we put together for management
8 to show them that we had a system that was viable and would
9 work in the cellular bands.

10 Q. And was this -- so PCS band, what does that mean?

11 A. Personal communication systems.

12 Q. Okay. And this is the results from your breadboard test
13 in 2013-2014?

14 A. That is correct.

15 Q. Okay.

16 MS. XI: If we could please turn to page 20.

17 Q. (BY MS. XI) Can you talk about the results that you got?

18 A. Yes. Right here you have the signal plus the intermod,
19 and to make that work we would have to transmit power or
20 receive power at 7dB. If we knock out the intermod, we're now
21 taking out all of this energy, so we can now recover this one
22 which is our desired signal, and we're able to do it 20 here,
23 or 15dB lower than we would have had before. So we have
24 gotten a 15d improvement in the system performance.

25 Q. What are the C and G blocks on the bottom?

1 A. Those are a subset of the cellular bands that are called
2 the PCS bands from 1800 to 1900 megahertz. So most of your
3 cell signals are in those bands and those are allocated bands
4 by the U.S. government.

5 Q. And are these cellular -- well, are these blocks blocks
6 in which cellular carriers operate?

7 A. Yes.

8 Q. So, practically speaking, what kinds of benefit do you
9 get from a 15.6dB improvement here to the desired signal in
10 what looks like passband G?

11 A. When you -- that kind of improvement you can transmit at
12 much lower levels so you could have more cell phones inside
13 the cell or you could increase the range at which those cell
14 phones could work. It's kind of like if you're in a room of
15 people and everybody's whispering, everyone can hear; but if
16 everybody starts talking loudly, nobody can hear. Well, you
17 get the same thing if people are transmitting really, really
18 high, there's lots of people putting a lot of energy out there
19 and it's much more difficult to hear and system performance is
20 much less. So if you get the improvement of that, you can
21 increase range or you can increase the number of
22 communications devices being supported.

23 Q. Did you show these results to anybody?

24 A. We only showed these to L-3 management.

25 Q. And what did you want to do with L-3?

1 A. We were trying to get -- acknowledging that problems that
2 we had seen from AT&T. Through their previous email you saw
3 we knew the passive was becoming a problem, so we were trying
4 to see if we could get L-3 to start developing cell tower
5 equipment that would incorporate this technology and provide
6 much better products than what the industry was getting right
7 at the moment.

8 Q. And what was L-3's response?

9 A. L-3 was impressed with the technology, thought it worked
10 very well, but they made it a business decision that their
11 concentration was tactical communications for the military,
12 and this did not fall into their core business and they didn't
13 want to get diverted from their core business.

14 Q. Were you disappointed that they turned you down?

15 A. Yes. I think we would have made very good partners, but
16 I had to respect it as a valid business decision.

17 Q. Who do you consider to be the core members of Finesse?

18 A. The core members of Finesse would be myself, of course,
19 and one of them was Mr. Ira Marks before he passed away, Mark
20 Chapman, and -- Mr. Mark Chapman, Mr. Bob Short, Ph.D.,
21 electrical engineer, and Andy Grossman who is our counsel.

22 Q. Do you pay these people a salary?

23 A. No, we don't.

24 Q. Have you yourself ever drawn a salary from Finesse?

25 A. No, I haven't.

1 Q. Why didn't Finesse pay anybody?

2 A. We didn't have the money, we didn't have the investors to
3 do that, so people were joining us because they had faith in
4 the technology.

5 Q. Did Finesse ever license its technology to anybody?

6 A. No.

7 Q. Did any company ever make an overture to buy the patents
8 from Finesse?

9 A. Yes.

10 Q. Who was that?

11 A. A company called Intellectual Ventures.

12 Q. When was that?

13 A. About 2011.

14 Q. Did you sell the portfolio?

15 A. No, we did not.

16 Q. Why not?

17 A. We thought the offer was way too low.

18 Q. What was their offer in 2011?

19 A. 2011 the offer was \$1 million for the patent portfolio.

20 Q. And what would you have taken for the patent portfolio
21 back then?

22 A. At that time we probably would have taken on the order of
23 \$10 million with a royalty stream behind it if they sold the
24 patents to others for building into products.

25 Q. Did you realize that Finesse is asking for \$166 million

1 in damages in this case?

2 A. Yes.

3 Q. So why would you have taken \$10 million in 2011 when you
4 want \$166 million today?

5 A. At that point we predicted that the problem was going to
6 become severe, but it hadn't happened yet, and we didn't have
7 identified persons who thought they needed it, and we didn't
8 have identified persons who we thought were using it, so
9 consequently at that point its value would have been less and
10 we had much less investment at that point.

11 Q. Did Finesse ever manufacture a chip that incorporated
12 your patented technology?

13 A. No, we did not.

14 Q. Has Finesse ever made any income?

15 A. No, they have not.

16 Q. Has Finesse ever partnered with anyone?

17 A. No.

18 Q. So would you consider Finesse a failure?

19 A. Absolutely not.

20 Q. Why not?

21 A. We have a proven technology, as you have seen three
22 demonstrations we just did. Every time we've tested it in
23 different configurations we have gotten at least 15dB,
24 sometimes 30. It's a viable product and we think it solves
25 major problems. And we think other people are using it and we

1 think we need to share in the benefit.

2 Q. Mr. Dacus in his opening statements alleged that Finesse
3 is here for a windfall. Do you agree with that statement?

4 A. No. I think we're here just looking for an equitable
5 share of the benefits that are realized from our technologies.

6 Q. Thank you, Mr. Smith.

7 MS. XI: Pass the witness.

8 THE COURT: Cross examination?

9 MR. NELSON: Yes, Your Honor. Thank you.

10 May I have a moment to pass out the cross binders?

11 THE COURT: You may.

12 MR. NELSON: Thank you, Your Honor.

13 THE COURT: All right, counsel. Proceed with cross
14 examination.

15 MR. NELSON: Thank you very much, Your Honor.

16 CROSS EXAMINATION

17 BY MR. NELSON: ?

18 Q. Good afternoon, sir.

19 A. Thank you.

20 Q. My name is Dave Nelson. I have some questions for you.

21 A. Yes, sir.

22 Q. All right. So you talked about Finesse and some of the
23 other folks that are at Finesse. Mr. Chapman used to be,
24 Mr. Marks, and there was another name that I'm -- Short?

25 A. Dr. Bob Short.

1 Q. Yes. But in terms of ownership, you own more than 50
2 percent of Finesse. Correct?

3 A. That's correct.

4 Q. Now, I want to talk a little bit about some terminology
5 that you talked about. You talked about this idea of active
6 intermodulation. Right?

7 A. Yes.

8 Q. Okay. And maybe this will help if I show you -- in your
9 binder you should have DX 160.

10 Now, DX 160, if we go to the very last page, do you
11 recognize this as a presentation from Mr. Chapman of Finesse?

12 A. Yes.

13 Q. Okay. So now if we could go to the second page, you see
14 the first bullet there, there are three main sources of
15 intermod interference. Do you see that?

16 A. Yes.

17 Q. And the first one there is out-of-band components from
18 power amplifier. Do you see that one?

19 A. Yes.

20 Q. And that would be what you called active intermodulation.
21 Is that correct?

22 A. They could be if they're produced which the amplifier.

23 Q. Okay. And then the next one is passive intermod--PIM is
24 what we've been calling that--from antenna and feed system.
25 Do you see that?

1 A. Yes.

2 Q. So that would be caused by imperfections in your cabling
3 and your system between your radio and your antenna. Right?

4 A. Yes.

5 Q. Including the antenna itself. Correct?

6 A. Yes.

7 Q. Now, that's something that is referred to as internal
8 PIM. Is that right?

9 A. We have not referred to that, but I see that you do.

10 Q. But you would understand that to be internal PIM. That's
11 PIM that's caused by imperfections, so-to-speak, in the system
12 between the radio and the antenna. Correct?

13 A. I understand the definition.

14 Q. And that would cause reflections of the signal that the
15 transmitter is trying to transmit. Correct?

16 A. Yes.

17 Q. And that could cause intermodulation problems. Correct?

18 A. Yes.

19 Q. And then the last one says passive intermod from external
20 reflections. Do you see that?

21 A. Yes.

22 Q. And I think you mentioned some things like bouncing off
23 buildings and trucks or different things like that where there
24 would be reflections of signals external to the antenna.
25 Correct?

1 A. Yes.

2 Q. And that could cause what you say is intermodulation
3 products that make its way into the band of the signal that
4 that antenna is trying to receive. Correct?

5 A. Yes.

6 Q. So we called call those external PIM. Right?

7 A. You could.

8 Q. Okay. So -- but in the internal PIM case that we talked
9 about where it's caused by imperfections in the cabling
10 between the radio and the antenna so that you're reflecting
11 the signal you're trying to transmit. Okay? Are you with me?

12 A. Not entirely, no.

13 Q. Okay. So in the internal PIM system, you said -- excuse
14 me. The internal PIM case, you said that the intermods are
15 caused by the signal that the transmitter is trying to
16 transmit. Right?

17 A. Yes.

18 Q. Okay. So if it's the signal that the transmitter is
19 trying to transmit, then the system knows what that signal is.
20 Correct?

21 A. Correct.

22 Q. So you wouldn't search for it when you know what it is.
23 Correct?

24 A. Correct.

25 Q. But in the external PIM situation, you don't know where

1 those interference-causing signals are. Right?

2 A. Not always.

3 Q. Okay. So that's -- I think in your system that's one of
4 the things you do is search for those. Right?

5 A. One of the things.

6 Q. Yeah. One of the -- in other words, in order to do the
7 math, to figure out how to cancel that intermod interference,
8 you need to first figure out what those interference-
9 generating signals are. Right?

10 A. If they're coming from your signals you know where they
11 are.

12 Q. Right. If they're coming from your signals then you
13 already know. Correct?

14 A. Uh-huh.

15 Q. So then you wouldn't have to search for them.

16 A. Correct.

17 Q. Okay. But if they are coming from some external source
18 where you don't know what these signals are, then you have to
19 search for them. Correct?

20 A. Correct.

21 Q. It makes sense. If I know something I don't need to look
22 for it, but if I don't know something I have to look for it.
23 Right?

24 A. Correct.

25 Q. Okay. And that's one of the things you said about your

1 system here is that you can search the entire band that that
2 antenna can receive to look for signals that might generate
3 the interference into that band of the signal you're actually
4 trying to receive. Correct?

5 A. Partially.

6 Q. Okay. So then in the external PIM situation, that's
7 where you would want to do the searching. Correct?

8 A. Potentially.

9 Q. If it's coming from your own transmission, there would be
10 no reason to do the searching. Correct?

11 A. Correct.

12 Q. Okay. Now, I want to talk some about your experience a
13 little bit.

14 So just to be clear, you haven't ever worked for a
15 network service provider like AT&T or Verizon. Correct?

16 A. No.

17 Q. And you haven't worked for the companies that do
18 maintenance on cell towers. Right?

19 A. No.

20 Q. And I think you said that in certain situations those
21 might be the companies that go out to deal with site hygiene
22 and things like that that you referred to. Is that right?

23 A. Yes.

24 Q. Okay. So then from your personal experience you don't
25 know what AT&T does in terms of site hygiene. Right?

1 A. I do not have access to their internal documents.

2 Q. Okay. And so then the answer is from your personal
3 information you don't know.

4 A. No.

5 Q. So they may send people out when they see some internal
6 PIM problem and fix it. Right?

7 A. Possibly.

8 Q. Okay. And I think -- if we go to the next page of this
9 document, this is --

10 MR. NELSON: And I should say this for the record to
11 be clear. DX 160. So this would be page 3 of the document
12 now. Actually let's go to page 4. Excuse me.

13 Q. (BY MR. NELSON) So here the very first bullet under the
14 title 'Opportunities to Mitigate', you see 'transmit feed
15 system'. Do you see that?

16 A. Yes.

17 Q. So is that -- that's a reference back to that internal
18 PIM situation that we saw a couple of slides earlier?

19 A. By your definition.

20 Q. Right. By what we talked about, that would be a
21 reference back to that internal PIM situation. Right?

22 A. I don't totally agree with that, but close enough.

23 Q. Right. It would be where the imperfections are between
24 the radio up to and including the antenna. Correct?

25 A. If that's your definition.

1 Q. Okay. And if the definition of that is internal PIM,
2 that's fine with you?

3 A. I'm sorry?

4 Q. Is that fine with you? If we just call that internal
5 PIM, is that fine with you?

6 A. I -- yes.

7 Q. Okay. So now, if we look at that third bullet, it says
8 'Most impairments from installation', meaning most of the
9 internal PIM impairments would be caused by faulty
10 installation. Is that what this is saying here?

11 A. Generally.

12 Q. Right. You might have loose connectors in the cabling or
13 you didn't tighten the connectors all the way down, things
14 like that. Right?

15 A. There's a list underneath that.

16 Q. Okay. And that works even better.

17 So now, some of the things you can do to fix those are to
18 check loose connections at jumpers, antennas, and RRUs.
19 Right?

20 A. Yeah.

21 Q. So you could fix that internal PIM problem by fixing your
22 loose connections at your jumpers, antennas, and RRUs.
23 Correct?

24 A. Probably.

25 Q. And another one is incorrect band radius and support of

1 jumpers. So, again, that would be an administration issue.

2 Right?

3 A. Uh-huh. Yes.

4 Q. I'm sorry. I'm sorry.

5 A. My apologies. I need to say yes.

6 Q. And I need to remind you and I didn't and I apologize,
7 sir.

8 THE COURT: Nothing for me to do. You've already
9 explained it to each other.

10 Q. (BY MR. NELSON) So that would be another thing that you
11 could go out and fix if you saw that causing an internal PIM
12 problem. Correct?

13 A. Yes.

14 Q. And same with inclusion of moisture and other impairments
15 in connections--you could go out and fix that if that was
16 causing an internal PIM problem. Correct?

17 A. I would assume so.

18 Q. Okay. So you'll agree from this document, this document
19 that came from Finesse itself, the opportunities to mitigate
20 this internal PIM problem, what's listed here are things to go
21 out and improve the site hygiene and clean up your
22 connections. Correct?

23 A. Say the question again, please.

24 Q. Yeah. So in the document that we're looking at, DX 160,
25 the examples of fixes, efforts to mitigate an internal PIM

1 problem, are to go out and fix things. Correct?

2 A. Yes.

3 Q. Okay. So you would agree that it's a very good strategy
4 that if you're seeing an internal PIM problem to go out and
5 fix the cause of those problems. Correct?

6 A. Not necessarily.

7 Q. It would be a strategy that's referenced in your
8 document. Correct?

9 A. It would be a strategy.

10 Q. Okay. And you don't know what AT&T does in that regard.
11 Correct?

12 A. I have no access to their internal documents.

13 Q. Okay. So now, sir -- and you don't know how big a
14 problem internal PIM is at AT&T, do you?

15 A. I do not have access to their internal documents.

16 Q. Okay. So you don't know one way or the other.

17 A. No. I'm precluded from having those documents, so I
18 don't know.

19 Q. By a court order. Right?

20 A. By I think Nokia and AT&T's request.

21 THE COURT: Let's move on.

22 MR. NELSON: Yes.

23 Q. (BY MR. NELSON) The -- now, a few times --

24 And maybe let's pull up that Qualcomm document that we
25 talked about, which was -- well, I have a version DX 151

1 that's in my -- and it should be in your binder in front of
2 you so let's go with that version.

3 So this is a presentation that you gave to Qualcomm in
4 April of 2004. Isn't that right?

5 A. Yes.

6 Q. And you told us on direct about that meeting. Correct?

7 A. Yes.

8 Q. Was that the only meeting with Qualcomm?

9 A. We had a couple of others kind of as a follow-on to it,
10 but basically using the same briefing deck for discussion.

11 Q. Were they all in that same time frame, that 2004 time
12 frame?

13 A. Yes.

14 Q. Okay. So now if we look at page 11 of that document --
15 and I just want to get some terminology down here. So here I
16 think what you said is that the document, DX 151 that we're
17 looking at, part of the purpose was to describe for Qualcomm
18 your intermod cancellation invention. Correct?

19 A. Yes.

20 Q. Okay. So here at the top it says 'search algorithm and
21 IMP estimate'. Do you see that?

22 A. Yes.

23 Q. Okay. And so the search algorithm--and we talked about
24 this a little bit earlier--is where you sample the entire band
25 that the antenna can receive, and you look for those signals

1 that can cause the interference into the band that you're
2 actually trying to receive the communication on. Right?

3 A. Yes.

4 Q. Okay. So again, here -- so you I think what it says
5 right to the left is you search the entire receive band for
6 source signals that can produce in-band intermodulation
7 products. Do you see that?

8 A. Yes.

9 Q. And 'in-band' in this context means the band of the
10 signal of interest, that signal you're trying to receive.
11 Correct?

12 A. The desired signal, yes.

13 Q. Yeah. And I think in these documents sometimes you say
14 'desired signal' and sometimes 'signal of interest'. Right?

15 A. Possibly.

16 Q. I mean --

17 A. Yeah.

18 Q. Yeah. And it's -- I think it will be on the next page.
19 I'll show you that when we get there.

20 So the idea, then, would be you find these signals.
21 They're out of band. Right? The interference causing signals
22 are out of the band of the signal you're trying to receive.
23 Right?

24 A. Correct.

25 Q. So those signals themselves you actually could filter

1 out, meaning they're not the concern; it's the intermodulation
2 products that they generate when they interact with each
3 other.

4 A. Correct.

5 Q. Okay. So that's the idea. So I have to know what those
6 are first in order to be able to calculate where that
7 interfering signal that we're calling the intermod signal is
8 going to be. Right?

9 A. Yes.

10 Q. Okay. But again, if I already know where those
11 interference generating signals are, because they happen to be
12 the ones I'm currently transmitting, I don't need to search
13 for them. Right?

14 A. Correct.

15 Q. So now if we go a little bit farther down, and this is
16 page 11, we say, 'Isolate the source signals with programmable
17 filters and use them to generate an estimate of the IM'.

18 So here you're isolating the source signals. Those are
19 the ones we're saying are the source of the interference.
20 Correct?

21 A. Yes.

22 Q. So the source signals would be the ones that are outside
23 that receive band but they interact to cause these
24 intermodulation products into the receive band. Right?

25 A. Not exactly.

1 Q. Okay.

2 A. The receive band has everything that's the signal of
3 interest. The desired signal is the one inside that.

4 Q. And I understand what you're saying, sir, so let me be a
5 little bit more precise.

6 So the receive band would be -- in this context what
7 you're saying is the entirety of the range of frequencies that
8 that antenna can receive. Right?

9 A. Yes.

10 Q. So, for example, you know, a lot of us are familiar with
11 like a car radio, although maybe people don't have them
12 anymore, but the car radio would be FM, and that goes, you
13 know, from what's the bottom of FM, it's like 50 something
14 megahertz to the hundred and something megahertz. Is that
15 right?

16 A. I think so.

17 Q. Yeah. So we'll just go with that, if that's correct.
18 What we're receiving the receive band -- because your car
19 antenna -- you know, the antenna for your radio in the car
20 can receive all of those. Right?

21 A. Yes.

22 Q. So that would be in this context the receive band.
23 Right?

24 A. Yes.

25 Q. But then the signal you're trying to receive in the

1 radio, you just tune it to 97.2 or whatever. Right?

2 A. Yes.

3 Q. Usually they're odd so it's probably 97.3. So that would
4 be tuning it, so that would be the signal that you're trying
5 to receive. Correct? In that example.

6 A. Yes.

7 Q. All right. So then the -- just to get the terminology
8 right, the source signals are the ones -- not the ones
9 themselves that are interfering with the signal you're trying
10 to receive, but they're the ones causing the interference with
11 the signal you're trying to receive. Right?

12 A. Yes.

13 Q. Okay. So then you find those. In other words, you
14 isolate that from the search that you did to find out where
15 those signals are. Correct? That's the next step.

16 A. Yes.

17 Q. And then you do the math and you figure out where the
18 interference is. Correct?

19 A. Yes.

20 Q. And then you cancel it out by generating the inverse
21 signal. Correct?

22 A. Yes.

23 Q. Okay. All right. So -- but -- and that was the way that
24 you described your invention to Qualcomm. Correct?

25 A. Correct.

1 MR. NELSON: Okay. Now, if we go to page 12, which
2 is the next page of this document. And you'll see here --
3 yeah, if we blow up the bottom.

4 Q. (BY MR. NELSON) And this is what I was talking about.
5 You see here it's referred to as 'signal of interest'?

6 A. Yes.

7 Q. So -- and a lot of these documents, that terminology
8 sometimes you use the 'signal of interest' terminology,
9 sometimes 'desired signal'. Right?

10 A. Yes.

11 Q. But the bottom line is that's the signal you actually
12 want to receive that's giving you your information. Right?

13 A. Yes.

14 Q. So the -- with Qualcomm, then, you went to Qualcomm
15 -- and just so we might not all be familiar, Qualcomm is one
16 of the largest chip providers for cell phones. Right?

17 A. Yes.

18 Q. And that was true back in 2004. Right?

19 A. Yes.

20 Q. And it's true today. Correct?

21 A. I believe so.

22 Q. So what you were trying to do was to interest Qualcomm in
23 your idea so they would put it in their chips. Right?

24 A. Correct.

25 Q. And that's similar to a number of the other companies you

1 talked about, like -- well, you mentioned Nokia, you mentioned
2 Intel, I think, a number of companies. I mean, so many I
3 think you said that you don't even remember them all. Right?

4 A. Yes.

5 Q. Okay. But those -- none of those companies said, Yes, we
6 want to license your technology or we want to partner with you
7 and put it into a chip. Right?

8 A. Not exactly.

9 Q. None of them did that. Correct?

10 A. Most of them said they weren't ready yet.

11 Q. But nobody did that. Correct?

12 A. Correct.

13 Q. Okay. So I think what you said on your direct was you
14 started to see a bunch of industry literature in around 2011
15 saying that this PIM, passive intermod, was going to be a big
16 problem. Right? Or was becoming a big problem, I think you
17 said.

18 A. Yes.

19 Q. Okay. So that's 2011. It was becoming a big problem.

20 A. Yes.

21 Q. Okay. Now, in 2011 you didn't go back to Qualcomm.
22 Right?

23 A. No. Qualcomm was a handset maker.

24 Q. 2011 Qualcomm was a handset maker?

25 A. They were in 2004. But no, we did not go back to

1 Qualcomm.

2 Q. Yeah. And you didn't go back to the companies that you
3 talked about who said -- who you said, Well, we're not
4 interested because we don't see this as a big problem yet.
5 Right?

6 A. At the time, no.

7 Q. Okay. So you didn't go back to them, but you did mention
8 that you went to a company called Intellectual Ventures in
9 2011--so this is when you're seeing industry literature this
10 is a big problem--to sell the patent. Right?

11 A. On or about.

12 Q. But -- and then you told us about that, and I think we'll
13 get into some more of that later, but that deal didn't happen.
14 Correct?

15 A. Correct.

16 Q. So now after that 2011 you're seeing it's a big problem,
17 you tried to sell the patent to IV, no deal, but you didn't go
18 back to any of the companies that you talked about who had
19 said, Well, this is too early. Right?

20 A. Correct.

21 Q. And, in fact, in 2016 -- so in 2016 you were seeing even
22 more industry literature saying that PIM was a problem.
23 Right?

24 A. Yes, it was increasing.

25 Q. Okay. But now in 2016 you didn't go back to Qualcomm and

1 the other companies we talked about to say, Hey, it was too
2 early before but now you're interested. Right?

3 A. We did not.

4 Q. Okay. But you did go back to IV in 2016 and try to sell
5 them the patent again, didn't you?

6 A. No.

7 MR. NELSON: So can we pull up DX 154?

8 Q. (BY MR. NELSON) So this is an email, and we'll look at
9 this one, from yourself to Mr. Chapman. Right?

10 A. Yes.

11 Q. And this is dated April 23rd, 2016. Isn't that right?

12 A. It does appear, yes.

13 Q. Okay. And this is -- the subject is 'Draft letter to
14 Intellectual Ventures'. Right?

15 A. Yes.

16 Q. And you say, Mark, please review the letter proposal to
17 send to Intellectual Ventures, let's discuss the strategy if
18 it is correct. We can discuss how much we want to tell them
19 up front and what documentation we want to disclose before a
20 phone conversation. Do you see that?

21 A. Yes.

22 Q. Now, if we go a little bit farther down, you see one of
23 the patents there is the '134 Patent. Do you see that?

24 A. Yes.

25 Q. And that's one of the patents in this case. Correct?

1 A. Yes.

2 Q. And the letter there is, "Dear Sherri Richman." She's at
3 IV. Correct?

4 A. Yes.

5 Q. "A couple of years ago we explored to you selling our
6 patents for intermodulation cancellation. At that time we did
7 not come to closure on a deal with you. At that time your
8 review teams inquired as to the business case and customers
9 and this technology might benefit." Do you see that?

10 A. Yes.

11 Q. Then skipping down you say, "We find ourselves in a
12 position of now looking for a partner to bring product to
13 market or capitalize on the IP offering." Do you see that?

14 A. Yes, I do.

15 Q. Now, Intellectual Ventures was -- they are in the
16 business, you understand, of licensing IP. Correct?

17 A. Yes.

18 Q. They don't make products. Correct?

19 A. They do not.

20 Q. Okay. You said, "We have two patent awards and one in
21 application for this technology. We have demonstrated the
22 technique in breadboard hardware and have test data."

23 So those -- you're referencing now the tests that you
24 were -- you talked about in your direct. Right?

25 A. Correct.

1 Q. So this is in this 2016 time frame. This is after all of
2 those tests that you ran that said prove the practicality of
3 the solution. Correct?

4 A. Yes.

5 Q. But here even though in 2011, five years before this, you
6 are seeing all the market literature that PIM is a big problem
7 and that by 2016 it's even a bigger problem in the market,
8 you've run all these tests, you go to IV to offer them the
9 patent, not back to Qualcomm to say, Hey, let's develop
10 technology. Correct?

11 A. Yes.

12 MR. NELSON: So now if I look at DX 345.

13 Q. (BY MR. NELSON) So DX 345, you'll see this is an email
14 from you back to the acquisitions team at Intellectual
15 Ventures. Correct?

16 A. Yes.

17 Q. And this responds to an email that Intellectual Ventures
18 sent to you. Correct?

19 A. Yes.

20 Q. And this from the acquisition teams at Intellectual
21 Ventures, to be clear. Right?

22 A. Yes.

23 Q. And the acquisitions teams, you understand those are the
24 ones that look at whether they are going to buy patents from
25 people. Correct?

1 A. Correct.

2 Q. So now it says, "Thank you for your interest in
3 Intellectual Ventures. We have reviewed your submission.
4 Unfortunately your invention is not within the technological
5 areas that we are currently pursuing. Intellectual Ventures
6 continues to expand its focus and we encourage you to submit
7 any patents and/or patent applications that you may have in
8 the future." Do you see that?

9 A. Yes, I do.

10 Q. So does that refresh your recollection that you did in
11 2016 try to sell the patent -- the '134 Patent to Intellectual
12 Ventures?

13 A. Yes, it does. I had forgotten about it because it went
14 nowhere so it kind of got filed off into the cobwebs.

15 Q. Okay. So then -- let me see if I have this straight. So
16 you went to more companies than you can remember in that
17 2004-2005 time frame to get them interested in your invention.
18 Correct?

19 A. Correct.

20 Q. And you said none of those deals worked out.

21 A. Correct.

22 Q. And I think what you said on direct, and I think we've
23 talked about it, too, but is the companies told you, Well
24 we're not interested; we don't see it as a big problem yet.
25 Right?

1 A. Correct.

2 Q. 2011 now, so move forward five, six years, you see
3 literature out there -- so this is industry literature. It's
4 public information. Correct?

5 A. Yes.

6 Q. That PIM is becoming a big problem. Right?

7 A. As I remember it, yes.

8 Q. Okay. But now in 2011, rather than go back even to some
9 of those companies who you talked to in the 2005 time frame to
10 say, Hey, now is the time, we see it, it's not too early
11 anymore, you went to Intellectual Ventures to sell the patent.
12 Right?

13 A. Yes. As you've refreshed my memory on that, we did
14 re-engage with them for a short period of time. Nothing came
15 of it, though.

16 Q. Well, first it was 2011 where you did that. That's the
17 deal that didn't -- you talked about on direct that didn't go
18 through. Correct?

19 A. Yes.

20 Q. And now 2016, fast forward, we see even -- you're seeing
21 public literature that PIM is even a bigger problem. Right?

22 A. Correct.

23 Q. But you still don't go back to Qualcomm and the various
24 companies that you talked about before who said it was too
25 early. Instead, you tried to sell the patent to Intellectual

1 Ventures again. Correct?

2 A. We explored the option.

3 Q. Okay. Now --

4 MR. NELSON: May I have a moment to confer with
5 Mr. Dacus?

6 THE COURT: You may consult with co-counsel.

7 MR. NELSON: Thank you.

8 (Pause in proceedings.)

9 Q. (BY MR. NELSON) Well, sir --

10 A. Yes, sir.

11 Q. I thank you for your time. I appreciate it.

12 MR. NELSON: I have no more questions at this time
13 and I pass the witness, Your Honor.

14 THE COURT: All right. Is there redirect from the
15 Plaintiff?

16 MS. XI: Yes, Your Honor.

17 THE COURT: Let's proceed with redirect examination.

18 REDIRECT EXAMINATION

19 BY MS. XI:

20 Q. Mr. Smith, do you regret not taking IV's or Intellectual
21 Property's [sic] \$1 million offer in 2011?

22 A. Definitely not.

23 MS. XI: And if we could just pull up PX 3. It's
24 the '134 Patent.

25 Q. (BY MS. XI) Is this your patent that you were talking

1 with Mr. Nelson about earlier?

2 A. Yes.

3 Q. And he asked you if search was going to be required for
4 internal PIM, searching for a signal.

5 A. He did ask that. I think we agreed, no, it was not.

6 MS. XI: Let's go to the claims of this patent,
7 which would start --

8 THE COURT: Yes, counsel?

9 MR. NELSON: I'm going to object as beyond the
10 scope. I didn't ask him about the claims of the patent. We
11 were talking about his Qualcomm presentation at this time.

12 THE COURT: Overruled.

13 MR. NELSON: Okay.

14 MS. XI: If we could go to the claims of this patent
15 towards the very end.

16 Q. (BY MS. XI) Is this a claim that defines the scope of
17 your invention, Mr. Smith?

18 A. Of the '134, yes.

19 Q. Yes. And do you see the word 'search' anywhere in this
20 claim?

21 A. No.

22 Q. Okay.

23 MS. XI: If we could go to claim 2.

24 Q. (BY MS. XI) Same question here. Is this one of the
25 asserted claims in this lawsuit against the Defendants?

1 A. Yes, it is.

2 Q. And is the word 'search' part of this claim?

3 A. No.

4 Q. Okay.

5 MS. XI: If we could go to claim 3.

6 Q. (BY MS. XI) Same question here. Is search required as
7 part of claim 3 of the '134 Patent?

8 A. No.

9 MR. NELSON: Objection. That calls for a legal
10 conclusion, Your Honor.

11 THE COURT: What's your response, Plaintiff?

12 MS. XI: I believe the inventor is able to testify
13 as to what he invented.

14 MR. NELSON: But that wasn't the question, Your
15 Honor; it was whether search is required by a particular
16 claim. It's a very different question.

17 THE COURT: Rephrase your question, counsel.

18 MS. XI: Yes, Your Honor.

19 Q. (BY MS. XI) Is the word 'search' part of this claim,
20 claim 3 of the '134 Patent?

21 A. No.

22 MS. XI: If we can pull up, please, Plaintiff's
23 Exhibit 4, which is the '775 Patent. And let's go to the
24 claims of this patent as well. Let's actually go to claim 4.

25 Q. (BY MS. XI) Mr. Smith, is this one of the claims that

1 you assert against the Defendants?

2 A. Yes.

3 Q. And just looking at the third line from the top, it says,
4 "Generating with a priori knowledge of a transmitter signal
5 set." A priori, what does that mean to you?

6 A. That means I know beforehand where those signals will be
7 located.

8 Q. So where are the signals coming from, according to your
9 invention?

10 A. A co-located transmitter can be the transfer that goes
11 with it or it could be a close transmitter.

12 Q. So you already know the signals?

13 A. That was the assumption here.

14 Q. Okay. And do you have to search for these signals?

15 A. You wouldn't have to.

16 Q. Do you agree that generally PIM hygiene is a good thing
17 for addressing problems of PIM?

18 A. I think it's a good technique in combination with other
19 things.

20 Q. And in combination with what other things?

21 A. Intermod cancellation.

22 Q. So would you agree with the statement that if you're
23 tackling the PIM problem then you want to use more than just
24 PIM hygiene?

25 A. Yes.

1 Q. How many shareholders are there of Finesse?

2 A. I'd have to go back and look at the list. I think
3 there's about 20.

4 Q. And what is your -- the percentage of Finesse that you
5 own?

6 A. Just over 50 percent; about 50.5.

7 MS. XI: Can we pull up Defendants' Exhibit 160?

8 Q. (BY MS. XI) Mr. Smith, do you recognize that this is the
9 exhibit that you were discussing with Mr. Nelson?

10 A. Yes.

11 Q. Is this a presentation that you authored?

12 A. No.

13 Q. Who authored this presentation?

14 A. Mr. Mark Chapman.

15 Q. Did you testify earlier that you didn't work for a
16 cellular provider?

17 A. Yes.

18 Q. But you did work for Lucent Technologies?

19 A. Yes.

20 Q. And did Lucent eventually become Nokia?

21 A. Yes.

22 Q. And I assume that Nokia is a cellular product
23 manufacturer now?

24 A. Yes.

25 Q. Okay. And that's your understanding, too. Right?

1 A. Yes.

2 Q. Great.

3 MS. XI: No more questions.

4 THE COURT: You pass the witness, counsel?

5 MS. XI: Pass the witness. Thank you.

6 THE COURT: Is there additional cross examination?

7 MR. NELSON: No, sir, Your Honor.

8 THE COURT: All right. You may step down,

9 Mr. Smith.

10 THE WITNESS: Thank you.

11 THE COURT: Plaintiff, call your next witness.

12 MS. FAIR: Your Honor, at this time Plaintiff is
13 calling a witness by deposition, if I may.

14 THE COURT: Please announce for the jury and the
15 record who you're calling by deposition, please.

16 MS. FAIR: Thank you, Your Honor.

17 At this time the Plaintiff calls Mr. Michael Calloway by
18 deposition. He is a cell system engineer for Nokia. The
19 trial exhibits -- the exhibits to be used are going to be --
20 Exhibit 7 from the deposition is PX 886, Deposition Exhibit 6
21 is PX 954, Deposition Exhibit 8 is PX 999. And the clip is 10
22 minutes 26 seconds all to be charged to the Plaintiff, Your
23 Honor.

24 THE COURT: All right. Proceed with this witness by
25 deposition.

1 MS. FAIR: Thank you.

2 MICHAEL CALLOWAY

3 BY VIDEO DEPOSITION

4 THE REPORTER: I'm going to ask you to please raise
5 your hand. Mr. Calloway? Thank you.

6 Do you solemnly swear under the penalty of perjury that
7 you are Michael Calloway and the testimony you are about to
8 give in the matter now pending shall be the truth, the whole
9 truth, and nothing but the truth?

10 THE WITNESS: Yes.

11 Q. Do you currently work for Nokia of America Corporation?

12 A. I do.

13 Q. Do you still hold the position of cell system engineer
14 today?

15 A. Yes.

16 Q. In your current role, do you currently -- do you
17 regularly meet or correspond with AT&T representatives?

18 A. Yes.

19 Q. When would you say you first heard the phrase 'passive
20 intermodulation'?

21 A. 2018.

22 Q. And does that date hold any significance for you?

23 A. Yes.

24 Q. What significance does 2018 hold for you in connection
25 with the phrase 'passive intermodulation'?

1 A. That was the date of a PowerPoint that had that subject
2 on it.

3 Q. During the presentation of the PowerPoint about passive
4 intermodulation in 2018, were you informed that Nokia was
5 offering products that addressed passive intermodulation?

6 A. Yes.

7 Q. Have you discussed passive intermodulation with AT&T?

8 A. Yes.

9 Q. Have you had discussions with AT&T about passive
10 intermodulation in connection with any specific products?

11 A. Yes.

12 Q. Which products are those?

13 A. Our dual-band radios.

14 Q. To your knowledge, does Nokia offer any tri-band remote
15 radio heads for sale to AT&T or other carriers?

16 A. Yes.

17 Q. Which models are those?

18 A. AHBBA. Alpha, hotel, bravo, bravo, Alpha.

19 Q. Does the AHBBA include the same three bands always, or
20 can those be configured to cover different bands?

21 A. The same bands.

22 Q. Which bands are those?

23 A. Band 12, band 14, and band 29.

24 Q. Are bands 12, 14, and 29, to your knowledge, particularly
25 prone to passive intermodulation?

1 A. Yes.

2 Q. I'm sharing Calloway 06 in the chart, which is a
3 spreadsheet with Bates stamp NOK_FIN_00025969.xlsx.

4 Do you recognize what's shown on the screen as Exhibit
5 Calloway 06?

6 A. Yes.

7 Q. What do you understand it to be?

8 A. It's a listing of all ENodeBs and the -- the value of the
9 two parameters in column C and D, and then the radio type in
10 column E.

11 Q. What's your understanding if any, of the difference
12 between the parameter shown in column C and the parameter
13 shown in column D?

14 A. Column C is the feature PIM cancellation to use; column D
15 is enabling that. My understanding is both need to be set to
16 true for PIM cancellation to be active and enabled at that
17 radio.

18 Q. I'm going to share what I've marked as Calloway 07 in the
19 chart. It has Bates stamp NOK_FIN_00016137. I'm going to go
20 to Bates stamp 16138 within what I've marked as Exhibit
21 Calloway 07.

22 So this -- this slide is titled 'PIM scenarios and PIM
23 cancellation customer issues, comments, anecdotes.' Correct.

24 A. Yes.

25 Q. And on the left in the top row of the table on the slide

1 ending 38 is the -- so it's the AT&T logo. Do you see that?

2 A. I do.

3 Q. And then the first line in the description next to the
4 AT&T logo reads, "B29/B17 issues--AT&T purchased B29 for CA on
5 B17." What would you understand the sentence "AT&T purchased
6 B29 for CA on B17" to mean?

7 A. So AT&T purchased a band 29 remote radio head for carrier
8 aggregation with a band 17 remote radio head; so...

9 Q. And then after that it reads "Bought E// equipment and
10 had B29 PIM desense B17, ALU B29 desensed B17." Do you see
11 that?

12 A. Yes, I do.

13 Q. So in this scenario, if one is speaking in the industry
14 about B29 PIM desensing B17, does that mean it's harder to
15 receive band 17 signals?

16 A. Yes.

17 Q. Do you remember any specific conversations with AT&T
18 representatives about difficulties with band 17 and 29 with
19 respect to Alcatel-Lucent products or equipment?

20 A. Yes.

21 Q. Do you remember what problems the AT&T representative
22 discussing on the topic of bands 29 and 17 with respect to
23 Alcatel-Lucent products?

24 A. Yes. There was -- there was a problem with our earlier
25 version of band 29 remote radio heads that was breaching the

1 band 17 spectrum, causing that -- that PIM. And I instructed
2 them that we were going to have a re-tuned band 29 remote
3 radio head that would help mitigate that problem. And
4 whenever they were going to use band 17 and band 29, they
5 used the band 29 re-tuned remote radio head.

6 Q. I'm going to share in the chat what I've marked as
7 Calloway 08, with Bates stamp NOK_FIN_00027258.pdf.

8 And this document is titled LTE2863 PIM cancellation for
9 AirScale dual band radios. Do you see that?

10 A. Yes.

11 Q. And the front page reads 'Carlos A. Cabrera, June 2018'.
12 Do you see that?

13 A. Yes.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's a document covering the feature 2863.

18 Q. Do you remember watching or reading this presentation?

19 A. Yes.

20 Q. When?

21 A. Sometime in 2018.

22 Q. What does LTE2863 refer to?

23 A. That is the feature designation for PIM cancellation for
24 AirScale dual-band radios.

25 Q. Would LTE2863 generally be a model-specific feature, or

1 is it one that, in your experience, may sometimes be deployed
2 across multiple radios?

3 A. Multiple radios.

4 Q. When you received this presentation, did you share any of
5 the information in it with AT&T representatives?

6 A. Yes.

7 Q. Do you remember discussing with AT&T representatives the
8 benefits of deploying dual-band radios as opposed to two
9 single-band radios?

10 A. Yes, I do.

11 Q. What were the benefits that you remember discussing with
12 AT&T representatives about dual-band radios we over
13 single-band radios?

14 A. You could free up space on tower tops by eliminating
15 up to three or more remote radio heads by using a dual-band
16 radio. It's more efficient.

17 THE COURT: Does that complete this witness by
18 deposition? Apparently not.

19 MS. FAIR: I'm sorry, Your Honor. There was one
20 more line. I stood up prematurely. That's the end of it,
21 though.

22 THE COURT: Do you want to replay that line?

23 MS. FAIR: No, we're okay.

24 THE COURT: All right. Then call your next witness.

25 MS. FAIR: At this time the Plaintiff calls by

1 deposition Mr. Dan Edwards. He is the AT&T lead product
2 development engineer. For the record, Deposition Exhibit 1 is
3 PX 674, Deposition Exhibit 4 is PX 678, Deposition Exhibit 8
4 is PX 690. The Plaintiff's time of this deposition is
5 8 minutes and 32 seconds, and the Defendants' time is 2
6 minutes and 35 seconds.

7 THE COURT: All right. Let's proceed with this
8 witness by deposition.

9 DAN EDWARDS

10 BY VIDEO DEPOSITION

11 Q. Can you please state your name for the record?

12 A. Daniel Edwards.

13 Q. And what's your current title, sir?

14 A. Lead product development engineer.

15 Q. So looking at your job responsibilities today, as a lead
16 product development engineer what is your responsibility with
17 respect to the Nokia hardware and passive components that are
18 within your scope?

19 A. Basically if there's a need for hardware if Nokia's
20 bringing out something new is to evaluate it and qualify it,
21 and if it passes, we put it in the toolbox for the local
22 markets to use.

23 Q. So, Mr. Edwards, when Nokia -- sorry. Scratch that.

24 When Nokia is presenting a new product for AT&T to
25 consider, would that be a product that AT&T typically had

1 asked for or would it be a new offering that Nokia presents?

2 A. It could be either/or.

3 Q. What's the last piece of hardware that you remember Nokia
4 presenting that AT&T had asked for or had input on?

5 A. The AHLBBA tri-band radio.

6 Q. Did AT&T ask for any of the specific features to be built
7 in to the tri-band radio?

8 A. We provided five high-level bullet points that had to be
9 there to make it successful.

10 Q. And the AHLBBA tri-band radio, is that the one that has
11 bands 14, 17, and 29?

12 A. Correct.

13 Q. What were the five high-level bullet points that AT&T
14 told Nokia were necessary to have the AHLBBA be successful?

15 A. Well, the primary one was to make sure that the
16 out-of-band emissions from band 29 transmit were removed from
17 band 12's receive frequencies. That was the key. That all
18 three carriers, 12, 14, and 29, could transmit at full power.
19 It was going to require PIM mitigation. And it had to draw
20 approximately 1300 watts of DC power.

21 Q. Why was it desirable for all three to be transmitting at
22 full power?

23 A. Because when you use it to design a coverage area you
24 need the full power.

25 Q. And I think you mentioned that transmitting all three of

1 these bands at full power would require PIM mitigation. Is
2 that right?

3 A. Yes, ma'am.

4 Q. And why is that the case?

5 A. Because band 29 and band 12 produce a third-order
6 intermod back into the 12 receive, and band 14 and band 12
7 creates a third-order intermod into each one of those
8 receives, and then the band 29 and band 14 also creates a
9 third-order intermod into band 14 to receive.

10 Q. With all of the intermodulation products that could occur
11 with those bands, why was it desirable to have all three in a
12 single radio rather than deploying, for example, dual-band
13 radio for 12 and 14 and then a single band radio for 29?

14 A. One would need to control the IMs and the out-of-band
15 emissions for all three. So, therefore, it's easier to
16 control it when they're all into one radio as in the --
17 separate.

18 Q. Do you believe the AHLBBA today meets the specifications
19 that you mentioned before regarding the power PIM mitigation
20 bands and out-of-band emissions?

21 A. It meets the high-level direction that we gave Nokia,
22 yes.

23 Q. As they are installed or deployed right now in AT&T's
24 network, is AT&T able to use all three bands on the AHLBBA
25 radios?

1 A. Yes, ma'am.

2 Q. Are you currently able to transmit the 12, 14, and 29
3 bands at full power in the AHLBBA radios?

4 A. Yes.

5 Q. Are the AHLBBA radios including any form of PIM
6 mitigation right now?

7 A. Yes.

8 Q. Is there any trend that you've noticed that affects
9 whether the PIM or PIM cancellation is better or worse in the
10 field?

11 A. Depending upon the length of coax connecting the radio to
12 the antenna.

13 Q. So does a shorter coax mean that the internal PIM
14 cancellation is more effective?

15 A. Yes.

16 Q. And a longer coax means that the internal PIM
17 cancellation is less effective?

18 A. Correct.

19 Q. And this is what I'm going to mark as Exhibit 1, so
20 Edwards Exhibit 1. The Bates stamp is AT&T_FW_90964.

21 Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. An email from me to Brian Gavin.

25 Q. Now, in the part A it says, "the decision to develop the

1 Nokia tri-band radio with PIM cancellation." Do you see that?

2 A. Yes.

3 Q. Does this refer to an AT&T decision or a Nokia decision?

4 A. Nokia decision.

5 Q. And in the last sentence in that paragraph it reads,

6 "Therefore, the need for RRH that does as much as possible as
7 to eliminate or control PIM," why did you say "the need for an
8 RRH that does as much as possible as to eliminate or control
9 PIM" rather than mentioning a CPRI solution?

10 A. Most likely the ease of deployment.

11 Q. What makes it easier to deploy PIM cancellation in an RRH
12 compared to in a CPRI unit?

13 A. Pim mitigation is already included in the RRH, and you're
14 deploying that. CPRI is totally a separate product. You'd
15 have to deploy both of them. So it's two versus one.

16 Q. And the next sentence reads, "From my recollection,
17 Ericsson developed the 614 on their own without asking AT&T
18 what they needed." Is that right?

19 A. Correct, yes.

20 Q. Okay. Does Nokia usually ask AT&T what it needs when it
21 develops products?

22 A. Yes. They discuss it with -- especially in the radio
23 they'll usually discuss it with me.

24 Q. Do you see the email on your screen, sir?

25 A. Yes.

1 Q. Where I'm going now is up to an email from you on April
2 2nd to Brian Gavin and Adam Loddeke. Do you see that?

3 A. Yep.

4 Q. And in the next paragraph it reads, "If you make a
5 dual-band or tri-band RRH that has bands 12, 14, and 29, along
6 with one that has 2/25 & 66, then you must use radio" -- I
7 think this was meant to be PIM-C. "The math does not change."
8 Is that correct?

9 A. Yep.

10 Q. And why must one use radio PIM-C in these circumstances?

11 A. You read the answer. The math doesn't change.

12 Q. Do you have any opinion as to what the most
13 PIM-challenged environments in North America are?

14 A. No. They're everywhere.

15 Q. So would addressing PIM mitigation have any effect on the
16 receive sensitivity?

17 A. Yes, it would.

18 Q. What effect would it have?

19 A. It would -- if you didn't have PIM mitigation, your
20 receive sensitivity would degrade.

21 Q. And what's the practical effect of the receive
22 sensitivity degrading in a radio?

23 A. The radio would not be capable of carrying the capacity
24 that it was designed for.

25 Q. And then in the next line it reads, "Because of limited

1 processing power, external PIM is not addressed." Do you see
2 that?

3 A. Yes.

4 Q. What do you mean by that?

5 A. External PIM will give you a lot more combinations that
6 you have to go do the math on, and the processing power to do
7 that math is what's being addressed there.

8 Q. So does it take less processing power to address internal
9 PIM than to address external PIM?

10 A. Yes.

11 THE COURT: Does that complete this witness by
12 deposition?

13 MS. FAIR: Yes, Your Honor.

14 THE COURT: Call your next witness, please.

15 MS. FAIR: At this time the Plaintiff calls by
16 deposition Mr. Dave Brewer. He is a Nokia account executive.
17 He testified as a corporate representative for Nokia. And for
18 the record, Deposition Exhibit 18 is PX 995. And the time is
19 the Plaintiff's; it is 5 minutes and 11 seconds.

20 THE COURT: Please proceed with this witness by
21 deposition.

22 DAVID JOHN BREWER

23 BY VIDEO DEPOSITION

24 Q. Okay. Could you please state your full name for the
25 record?

1 A. David John Brewer.

2 Q. Okay. What are your job duties and responsibilities?

3 A. So I'm an account executive who sells hardware and
4 software to AT&T. Responsibilities are present new products
5 to AT&T, develop and present pricing to AT&T, convince AT&T to
6 close on particular prices for particular products, and ensure
7 that that's documented appropriately in contract form so that
8 we can then begin accepting purchase orders based on an
9 executed contract.

10 Q. So PIM cancellation was developed for the dual-band
11 units, but it also has advantages with the -- specifically
12 with band 5. Is that your answer?

13 A. No. My answer is it was initially developed for -- well,
14 it was developed for dual band. There are some specific cases
15 for single band where it may also be relevant, but those tend
16 to be very minor and small and don't always exist with every
17 operator, but they can exist.

18 So there can be passive intermod concerns with single
19 band under certain scenarios, but between Nokia and AT&T and
20 the Nokia footprint there are no such concerns with band 5
21 because AT&T doesn't have enough spectrum to have multiple
22 carriers of band 5.

23 Q. So it is your understanding that AT&T turns PIM-C on for
24 every Nokia -- RRH in its network?

25 A. Correct. It's my understanding that's their intention,

1 and I think there may be data that was done via an audit, and
2 so if there are some that are off they've -- they've done it
3 by accident.

4 Q. This is Bates No. NOK_FIN_00026987.

5 The title is B12B14B29 tri-band RRH commercial proposal.

6 A. Yes.

7 Q. All right. Are you familiar with this document?

8 A. I am 100 percent familiar with this document. I prepared
9 this document.

10 Q. Okay. So in a broad sense, what is this document for?

11 A. This document is the document we use to initiate the
12 formal discussion with AT&T supply chain on a new piece of
13 hardware. So at this point in the process we've already had
14 discussions with CTO, which is the technical team at AT&T, and
15 we've got some guidance from them -- well, in most cases we've
16 got guidance from them that they're interested in a product,
17 and in some cases they are interested enough to give us
18 requirements or specifications that -- that they would like us
19 to meet. In some cases they don't give us any specifications
20 or requirements; they say, you know, you guys go build it and,
21 you know, come back with a proposal that we think is
22 interesting. So that happens sometimes. And in some cases we
23 actually make proposals that CTO is not even on board with in
24 the sense of, you know, they haven't asked for something
25 specifically, and we're trying to proactively put something in

1 front of them.

2 But in any event, this document is at the stage where
3 we're taking a proposal to supply chain, we have -- went
4 through the internal review process, which I described, that
5 allow us to put a commercial price in front of AT&T and begin
6 the negotiations. And so this is a document that is the
7 starting point for negotiating with supply chain on the price
8 they will agree to pay for a new product.

9 Q. So -- so you don't know if there is additional
10 PIM-cancellation capabilities in this tri-band unit?

11 A. I've been told by -- by our technical teams that I
12 believe it to be true that it can cancel PIM across the
13 various combinations of bands that are in this RRH. Because
14 you have more bands, you have more combinations and,
15 therefore, does it do more PIM cancellation? I believe the
16 answer is yes. That's what I've been told--it does more PIM
17 cancellation. But does it take more components and hardware
18 in order to do that? I don't know.

19 THE COURT: Does that complete this witness by
20 deposition?

21 MS. FAIR: Yes, Your Honor.

22 THE COURT: Call your next witness.

23 MS. FAIR: Our last witness by deposition at this
24 time is Mr. Alex Casillas. He is a Nokia senior hardware
25 engineer. For the record Deposition Exhibit 10 is PX 834,

1 Deposition Exhibit 8 is PX 839, and Deposition Exhibit 5 is
2 PX 917. The Plaintiff's time is 10 minutes and 43 seconds,
3 the Defendants' time is 1 minute and 30 seconds.

4 THE COURT: All right. Proceed with this witness by
5 deposition, please.

6 ALEXANDER JAMES CASILLAS

7 BY VIDEO DEPOSITION

8 Q. Would you please state your full name for the record?

9 A. It's Alexander James Casillas.

10 Q. I'm providing this to you in case you need to refer to
11 these deposition topics, because I'm sure you're aware you've
12 been designated to testify as to certain topics today as a
13 corporative representative on behalf of a Nokia. Do you
14 understand that?

15 A. Yes.

16 Q. And your current title at Nokia is senior hardware
17 engineer. Correct?

18 A. Actually I got a promotion recently, like last month, and
19 to be honest, I was a senior hardware engineer and I think I'm
20 now a staff engineer. I don't know what the official
21 nomenclature is. But for purposes of this deposition, yeah,
22 during the period that GROOT was being developed, I was a
23 senior hardware engineer.

24 Q. What is GROOT, just generally, if you can give me an
25 abstract for it?

1 A. Well, GROOT is an FPGA, and its primary goal is to
2 perform the PIM-C function for the Galaxy variants, the radios
3 that require PIM-C.

4 Q. And so GROOT is the FPGA used for performing the PIM-C
5 function for Galaxy variants. Is that right?

6 A. Right. I mean -- yes, for Galaxy variants when it's
7 enabled, and if the FPGA is, you know, populated, you know,
8 the FPGA is solely responsible for the PIM-C function.

9 Q. This is Bates produced document NOK_FIN_000021612 [sic]
10 and will be Exhibit Casillas 05.

11 And have you seen this document before?

12 A. Yes, at some point. And this was over the last period of
13 six years, yes.

14 Q. And on the front page of this document titled 'AirScale
15 Multiradio BTS Rel5.1 Galaxy PIM-C Functional Algorithm
16 Specification', there is a sub-heading that says 'Galaxy
17 program'. What is the Galaxy program?

18 A. Well, that's just a nomenclature that -- that was given
19 to the galaxy radio program. I mean, I don't -- I'm not sure
20 how to -- how else to describe it.

21 Q. And in the legend it mentions the RX as you noted, and
22 the UL + actual PIM path. Do you see that?

23 A. Yes, uh-huh.

24 Q. And what is the UL?

25 A. Uplink.

1 Q. And is that synonymous --

2 A. Up --

3 Q. Sorry. Go ahead, sir.

4 A. Yes. Uplink is synonymous with the receive; downlink is
5 synonymous with the transmit.

6 Q. And it also says '+ actual PIM path'. What does that
7 mean?

8 A. From our standpoint, that -- that RX would be considered
9 to be dirty. So it's the RX and it has potential PIM included
10 on it.

11 Q. And where is the PIM generated?

12 A. Well, in this diagram -- well, it's labeled on the
13 diagram. PIM sources: Duplexer, cables, antenna. It looks
14 like it's this dashed outline. It could be any one of those
15 three things that they're outlining.

16 Q. And can you tell me which components in Figure 1 are
17 located in the transmitter?

18 A. Look -- what do you mean 'located in the transmitter'?

19 Q. They're on the -- they're on the transmission side.

20 A. Right. I mean, I guess they would be the -- clearly the
21 digital-to-analog converter, then they have the -- it looks
22 like this low-power TX section, then the PA. And it looks
23 like -- I'm not sure what that little circle with the arrow
24 circulating on it. I guess that's the -- that's the
25 circulator. I would say those components.

1 And then technically a duplexer is part of the transmit
2 session because the transmit goes through that and then it
3 makes it through the cable to the antenna. So it's -- it's
4 effectively the entire top half. And then the transmit also
5 gets fed back into the FPGA through the -- I guess that's a
6 red dash line. Yeah, that's red. Through the RF ADC that
7 goes into the PIM adaptive model (IM3 IM5 block) and the FPGA.

8 Q. Do you consider it significant to Galaxy as a feature
9 that wideband PIM-C processing is accomplished in Galaxy?

10 A. Based on what I can see on marketing slides, I would say
11 yes.

12 Q. And why is that?

13 A. Well, it's a feature. It's a feature. Just like any
14 product has features, it's a feature that the customer can
15 enable if they need to.

16 Q. And what benefit does it provide to customers?

17 A. Well, when it's enabled it improves the signal-to-noise
18 ratio on the receive side, and for our customers that's --
19 that translates to more cell -- more calls per -- per cell.

20 Q. We're going to get right into our next exhibit here with
21 Casillas 08, and this is a Nokia-produced document with the
22 Bates number ending in 0710.

23 And so how is correlator -- what is correlator doing with
24 a dual-band input.

25 A. Well, the correlator generates the model on its own also.

1 So just like the NL generates a model, the correlator
2 generates the exact same model. And so the delay search would
3 be run on the selected term. So if a product had -- let's say
4 an IM3 was the primary area of concern, then the correlator
5 would run delay search on an IM3, and then that delay,
6 whatever it finds, would be put in the respective NL engine,
7 and that's when cancellation happens.

8 So the term that the correlator generates could be from a
9 single band, it could be a cross term, it could be an IM3
10 special. It's up to the software to decide which term to run
11 the delay search on.

12 Q. Okay. And so the delay blocks after the NL block, those
13 are adjusting the signal space. Is that right?

14 A. No. It's -- in a time domain it's adding delay to align
15 the transmit model with the RX.

16 Q. But that's not fixed delay. Correct?

17 A. It's variable. There's a default delay -- delay at
18 power-up, which I believe is 10, and the PIM engine is
19 disabled by default. And once delay search is run on the
20 respective term, the delay is programmed, and then, you know,
21 the cancellation can be enabled at that point.

22 Q. And so is the delay affected by -- is the delay after the
23 NL block here affected by the correlator delay search
24 determination?

25 A. Yes. The delay search that's running the correlator is

1 what ultimately determines what delay is programmed into the
2 NL block.

3 Q. So the key performance indicator for your team would be
4 to meet the system requirements for -- for individual products
5 in terms of your test cases performed as to PIM-C. Is that
6 right?

7 A. Right. Yes and no. It's an optional feature. So in the
8 -- you know, the customers would want as much cancellation as
9 possible because it increases, you know, their signal-to-noise
10 ratio. But their -- you know, there are scenarios, like this
11 band edge IM3, where even with the best -- you know, even with
12 the best situations, you can't pull up as much cancellation as
13 you need to.

14 Q. So one of the notes mentions that the results improved
15 with further optimization here. If your engineering tests
16 were unable to meet the spec requirements across the range
17 provided at the top of -- of this test case, for example,
18 would that product still be provided to a customer?

19 A. Right. Because the worst case is that there's no PIM
20 cancellation and when -- you know, the customers are no better
21 off than they were before.

22 Q. So red numbers aren't necessarily a bad thing; they just
23 mean that you haven't achieved the level of results you were
24 looking to achieve.

25 A. Correct. Yes.

1 Q. But the PIM cancellation is still improving customer
2 signal-to-noise ratio and the other things you mentioned.

3 A. For the most part, yes. I agree.

4 Q. Is this still accurate in terms of the way the correlator
5 is implemented?

6 A. This is the initial diagram from 2016 or '17. So let me
7 take a look real quick. Yes, it's effectively the same. So
8 this has -- AHPMDD is the last entry in the FPGA hardware
9 configuration table on page 25. I think I'm reading that
10 right. Oh, it's page 26 of the PDF. So this is -- this is
11 very recent. There have been a few small changes. But if you
12 look at the revision table, the only changes at this point are
13 adding -- adding hardware IDs to this table.

14 Q. And -- but you're saying there have been modifications to
15 this document since then?

16 A. Remember, I referred to the hardware variant that's being
17 developed in China?

18 Q. Right.

19 A. That -- whenever a new variant comes up, we have to edit
20 this document and add the new hardware ID. So you can see
21 that version 3.22 is add hardware ID; version 3.23, add
22 hardware ID; 3.24, add hardware ID. So the difference between
23 this document and the one that's out there right now is just,
24 effectively, a hardware ID that's been added for a new Chinese
25 variant.

1 THE COURT: Does that complete this witness by
2 deposition?

3 MS. FAIR: Yes, Your Honor.

4 THE COURT: All right. Thank you, counsel.

5 Ladies and gentlemen of the jury, the information I've
6 been given indicates that the next witness is going to be on
7 the witness stand approximately two hours. We are not going
8 to start that kind of a lengthy witness this late in the day.
9 It's 20 minutes until 6:00.

10 I'm going to ask you as you leave the courtroom in a few
11 minutes to take your juror notebooks with you. Place them
12 closed on the table in the jury room so that they'll be there
13 awaiting you in the morning.

14 Let me remind you to please plan your travel such that
15 you can be assembled in the jury room around 8:15 in the
16 morning, and we will try to start back in court with the next
17 Plaintiff's witness as close to 8:30 as possible. But please
18 plan your travel accordingly.

19 Please remember all my instructions and follow them,
20 including among them not to discuss the case with anyone. And
21 I promise you, unless you live at home by yourself or you have
22 a Mynah Bird that can talk, when you walk through the door
23 you're going to be asked what happened in federal court today.
24 Just don't try to answer that question.

25 Please travel safely to your homes and with that, ladies

1 and gentlemen. You are excused for the evening. I'll see you
2 tomorrow morning.

3 (Whereupon, the jury left the courtroom.)

4 THE COURT: Please be seated.

5 Counsel, let me remind you of your meet and confer
6 obligations overnight. I'll be looking for an update around
7 10:00, and then tomorrow morning if there are disputes that
8 have not been able to be resolved through your ongoing and
9 continuing meet and confer efforts, then I'll expect a binder
10 delivered to chambers by 7:00 a.m. tomorrow promptly that
11 outlines where you still have disputes, including a
12 representative of any demonstrative or other matter that's the
13 subject of your dispute together with a single paragraph
14 explaining each party's position on each dispute, and then
15 I'll be prepared to meet with you and resolve those before we
16 bring the jury in and begin tomorrow's portion of the
17 evidence.

18 Also let me remind you that prior to me bringing in the
19 jury tomorrow morning, I'm going to expect a representative of
20 each side to be prepared to read into the record from the
21 podium the list of pre-admitted exhibits that may have been
22 used during today's portion of the trial, and I'll do that
23 each morning before the jury comes in on a rolling basis so
24 that we can accurately record in the minutes--excuse me--in
25 the transcript which items from the list of pre-admitted

1 exhibits have actually been used before the jury and are
2 admitted exhibits and a part of the record evidence in the
3 case. So be prepared to do that before the jury comes in each
4 morning of each day.

5 For your information, according to the Court's records,
6 we've used 2 hours 33 minutes and 49 seconds of allocated
7 trial time today. That is to be allocated 1 hour and 56
8 minutes and 55 seconds to the Plaintiff; to the Defendants and
9 Intervenor, 36 minutes and 54 seconds.

10 Are there other issues we need to take up before we
11 recess for the evening?

12 MR. GRINSTEIN: Nothing from the Plaintiff, Your
13 Honor.

14 MR. DACUS: Nothing from us, Your Honor. Thank you.

15 THE COURT: All right. We had mentioned in chambers
16 this morning, counsel, the motion for leave to narrow the case
17 and the objections thereto. I had asked for some follow-up
18 input from Plaintiffs on their time and resources allocated to
19 those matters that would be discarded through that narrowing.
20 I would hope you could have something for me tomorrow morning
21 when we meet in chambers.

22 MR. GRINSTEIN: Yes, Your Honor.

23 THE COURT: All right. With that, counsel, we stand
24 in recess until tomorrow morning.

25 (The proceedings were concluded at 5:45 p.m.)

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I HEREBY CERTIFY THAT THE FOREGOING IS A
CORRECT TRANSCRIPT FROM THE RECORD OF
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
COURT AND THE JUDICIAL CONFERENCE OF THE
UNITED STATES.

S/Shawn McRoberts 01/09/2023

DATE
SHAWN McROBERTS, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER